

MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

HEARING ROOM A
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 7, 2001

10:00 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

William Keese, Chairperson

Robert Laurie

Michal Moore (via telephone)

Robert Pernell

Arthur Rosenfeld

STAFF

Mr. Boyd

Ms. Martha Brook

Mr. Bill Chamberlain, Chief Counsel

Ms. Beverly Duffy

Mr. Gary Fay, Hearing Officer

Mr. Dennis Fukumoto

Ms. Susan Gefter, Hearing Officer

Mr. Gabriel Herrera

Ms. Caryn Holmes, Senior Staff Counsel

Mr. Kenneth Koyama

Mr. Steve Larson, Executive Director

Mr. Sandy Miller

Mr. Dave Mundstock, Staff Counsel

Mr. Bill Pennington

Mr. Chris Tooker

Mr. Dale Trenchel

Mr. Mike Trujillo

ALSO PRESENT

Mr. Chris Chaddock

Mr. Jeff Chapman

Mr. Gary Fernstrom

Mr. John Hodges

Mr. John McKinsey

Mr. Bill Myers

Ms. Kate Poole

Mr. Tim Rosknecht

Mr. R.F. Williams

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1 PROCEEDINGS

2 CHAIRPERSON KEESE: Call the meeting of the
3 Energy Commission to order. Commissioner Pernell, please
4 lead the pledge.

5 (Thereupon Commissioner Pernell led the
6 Pledge of Allegiance.)

7 CHAIRPERSON KEESE: I considered starting with
8 happy birthday to Mr. O'Brien, but we decided to stick
9 with our ritual.

10 The first item which we're going to take up,
11 Commissioners, is the approval of the addition to the
12 agenda of Items 23 and 25.

13 Could I have a motion, please.

14 COMMISSIONER PERNELL: Move approval.

15 COMMISSIONER ROSENFELD: Second.

16 CHAIRPERSON KEESE: Moved my Commissioner
17 Pernell, seconded by Commissioner Rosenfeld.

18 COMMISSIONER LAURIE: Mr. Chairman.

19 CHAIRPERSON KEESE: Commissioner Laurie.

20 COMMISSIONER LAURIE: Mr. Chamberlain, you have
21 to make specific findings and can you just state those
22 findings so they can be made a part of the record, please.
23 Those findings are the findings necessary to add an item
24 to the agenda.

25 CHIEF COUNSEL CHAMBERLAIN: Yes.

1 COMMISSIONER LAURIE: Mr. Chairman, I can
2 summarize. The findings you have to make are simply that
3 the information was not available at the time that the
4 original agenda was prepared, and that it is important and
5 necessary and timely that it be added now. And I would
6 ask that the motion maker and the second agree to add that
7 to the motion.

8 CHIEF COUNSEL CHAMBERLAIN: Mr. Chairman, if I
9 could read the words of the statute for you. You have to
10 determine by a two-thirds vote of the members present that
11 there exists a need to take immediate action and that the
12 need for action came to the attention of the State body
13 subsequent to the agenda being posted in its normal
14 ten-day noticing.

15 CHAIRPERSON KEESE: Thank you. Commissioner
16 Pernell, is that acceptable able to you?

17 COMMISSIONER PERNELL: Yes.

18 COMMISSIONER ROSENFELD: Yes.

19 CHAIRPERSON KEESE: That's acceptable to the
20 maker and the second.

21 COMMISSIONER LAURIE: Thank you, Mr. Chairman.

22 CHAIRPERSON KEESE: Thank you, Commissioner
23 Laurie for keeping us in line.

24 COMMISSIONER LAURIE: Thank you, Mr. Chamberlain.
25 Thank you, Mr. Larson.

1 (Laughter.)

2 CHAIRPERSON KEESE: All in favor?

3 (Ayes.)

4 CHAIRPERSON KEESE: Opposed?

5 Adopted four to nothing.

6 Commissioner Moore will not be at the meeting
7 today. He will be joining us at 11:30 by telephone from
8 an airplane somewhere over the country.

9 Consent calendar. Do I have a motion?

10 COMMISSIONER ROSENFELD: So moved.

11 CHAIRPERSON KEESE: Motion by Commissioner
12 Rosenfeld.

13 COMMISSIONER LAURIE: Second.

14 CHAIRPERSON KEESE: Second by Commissioner
15 Laurie.

16 All if favor?

17 (Ayes.)

18 CHAIRPERSON KEESE: Adopted unanimously four to
19 nothing.

20 Item 2, Ventura County Air Pollution Control
21 District. Possible approval of contract 500-00-006 for
22 \$50,000 to provide electric charger infrastructure
23 incentives for up to 25 public and private chargers within
24 the district's geographic area.

25 MR. TRUJILLO: Mike Trujillo, Transportation

1 Technology and Fuels office.

2 CHAIRPERSON KEESE: Sit reasonably close to the
3 mike so that the record can --

4 MR. TRUJILLO: Transportation, technology and
5 fuels office, Mike Trujillo. And we're here with actually
6 two of them. The first one would be Ventura County Air
7 Pollution Control District.

8 It's a member request. There was money budgeted
9 in the State budget this year for \$50,000 for electric
10 charging. Ventura proposes to go out with an RFP, Request
11 For Proposals, and hopes to fund at least 25 sites, both
12 public and private agencies involved for public
13 recharging. So we're seeking approval of \$50,000 for
14 Ventura.

15 CHAIRPERSON KEESE: Thank you. Do I have a
16 motion?

17 COMMISSIONER ROSENFELD: So moved.

18 CHAIRPERSON KEESE: Motion by Commissioner
19 Rosenfeld.

20 COMMISSIONER PERNELL: Second.

21 CHAIRPERSON KEESE: Second by Commissioner
22 Pernell.

23 Any discussion on that?

24 Any public comment?

25 All in favor?

1 (Ayes.)

2 CHAIRPERSON KEESE: Opposed?

3 Adopted four to nothing.

4 Item 3, Ventura Country Air Pollution Control
5 District. Possible approval of contract 500-00-005 for
6 \$250,000 to provide incentives at one or more school
7 district bus yards and guarantee the availability of
8 on-site fueling for natural gas buses.

9 MR. TRUJILLO: Again, Mike Trujillo from the
10 transportation, technology and fuels office. Once, again,
11 another member request. It's for \$250,000. Ventura Air
12 Pollution Control District hopes to fund at least five
13 sites, school districts, with natural gas infrastructure.
14 So, again, we seek approval for \$250,000 to do this
15 project.

16 COMMISSIONER PERNELL: Move approval.

17 CHAIRPERSON KEESE: Motion Commissioner Pernell.

18 COMMISSIONER ROSENFELD: Second.

19 CHAIRPERSON KEESE: Second Commissioner
20 Rosenfeld.

21 COMMISSIONER PERNELL: Mr. Chairman, on the
22 question.

23 CHAIRPERSON KEESE: Commissioner Pernell.

24 COMMISSIONER PERNELL: Is this Carl Moyer funds
25 that we don't have?

1 MR. TRUJILLO: No. This is not Carl Moyer funds.
2 I think Item 11 is the one that addresses Moyer funds, but
3 again that -- we can discuss it at Item 11. This was
4 actually budgeted money as a member request out of the
5 State budget.

6 COMMISSIONER PERNELL: Okay.

7 CHAIRPERSON KEESE: Any further questions?

8 Public comment?

9 All in favor?

10 (Ayes.)

11 CHAIRPERSON KEESE: Opposed?

12 Adopted four to nothing.

13 Thank you.

14 CHAIRPERSON KEESE: We'll take Items 4 and 5
15 together. ADM Associates, possible approval of contract
16 400-00-036 for \$997,850 to provide energy efficient
17 low-income housing through the PIER Building Fund.

18 Item 5, Build Industry Institute, possible
19 approval of contract 400-00-037 for \$996,020 to provide
20 profitability, quality and risk reduction through energy
21 efficiency through the PIER building fund.

22 Good morning.

23 MS. JENKINS: Thank you. Good morning. My name
24 is Nancy Jenkins. I am the Commission's PIER Buildings
25 Program Manager. And the two buildings research contracts

1 we're bringing before you this morning are as a result of
2 a targeted solicitation that we issued last summer. We
3 received eight proposals for that solicitation and we felt
4 that three of the scored very highly. And essentially
5 we're bringing two to you this morning for approval and
6 one will be brought to you at a later business meeting.

7 The first one will be presented by Dale
8 Trenchel. It's the ADM proposal. And Dale will give you
9 a brief summary of that project.

10 MR. TRENSCHEL: Thank you. This is energy
11 efficiency for low-income housing --

12 CHAIRPERSON KEESE: Real close to the mike,
13 please.

14 MR. TRENSCHEL: Real close. I'll swallow this
15 yet.

16 (Laughter.)

17 MR. TRENSCHEL: This is the energy efficient
18 low-income housing contract, as you said, for \$997,850.
19 It's with ADM and Associates here in Sacramento. And the
20 purpose of this contract is to develop low-cost strategies
21 and technologies that will improve the energy efficiency
22 of low-income housing and reduce the related energy
23 expenses of low-income households.

24 We feel that the proposed work is a good match to
25 the RFP solicitation target addressing low-income

1 household energy use and comfort. And the program team in
2 this case has a unique aspect to it, is that it links
3 research scientists with low-income building partners of
4 Habitat For Humanity and some manufactured housing work as
5 well.

6 What we expect as an outcome is that we'll --
7 from this research is that we'll get improved practices
8 and technologies for greater energy efficiency in that
9 low-income housing market.

10 And that concludes what I have to say.

11 CHAIRPERSON KEESE: Thank you.

12 COMMISSIONER ROSENFELD: Move approval.

13 CHAIRPERSON KEESE: Motion Commissioner
14 Rosenfeld.

15 COMMISSIONER PERNELL: Second.

16 CHAIRPERSON KEESE: Second Commissioner Pernell.

17 Further discussion?

18 COMMISSIONER PERNELL: Mr. Chairman, is this only
19 on number four or on 4 and 5?

20 CHAIRPERSON KEESE: Actually, we were going to
21 take them together, you're right. Why don't we hear
22 number five before -- we'll withdraw that motion.

23 COMMISSIONER PERNELL: I'll withdraw my second.

24 MS. BROOK: My name is Martha Brook and I'm
25 presenting the profitability, quality and risk reduction

1 through energy efficiency program. The contract will be
2 building the Industry Institute for \$996,000.

3 The purpose of this contract is to develop
4 builder profit incentives that will encourage energy
5 efficient construction. This builder profit will be
6 generated through reduced warranty and call-back costs and
7 increased sales through home mortgages that place value on
8 home quality, comfort and energy efficiency.

9 The program also provides builders and their
10 designers with improved analytical tools that will better
11 demonstrate heating and cooling systems, sizing
12 differences and their associated cost savings due to
13 quality installations.

14 The research program addresses the new housing
15 market in California and focuses on energy efficient
16 construction practices that address home builder issues, a
17 specific target area of the solicitation. The proposal
18 responded well to the programmatic intent of the
19 solicitation and developed an unprecedented team which
20 includes researchers, California production home builders,
21 warranty professionals and lenders.

22 The building industry partners will provide
23 information at key times throughout the research and also
24 review the products for practicality, cost and
25 marketability.

1 The National Association of Home Builders are key
2 research members as well as the Meyers Group, Rand and
3 Console. This contract will result in construction
4 protocols, HVC design tools, a home energy rating system
5 and mortgage guidelines that all specifically link home
6 quality, comfort and energy efficiency.

7 Unless you have any questions, I'm through with
8 my presentation.

9 CHAIRPERSON KEESE: Questions on this item?
10 Do I have a motion on items 4 and 5?

11 COMMISSIONER ROSENFELD: I so move.

12 CHAIRPERSON KEESE: Moved by Commission
13 Rosenfeld.

14 COMMISSIONER PERNELL: Second.

15 CHAIRPERSON KEESE: Seconded by Commissioner
16 Pernell.

17 Any public comment?

18 All in favor?

19 (Ayes.)

20 CHAIRPERSON KEESE: Opposed?

21 Adopted four to nothing. Thank you.

22 Item 6 has been removed from the agenda.

23 Item 7, Renewable Energy Program, Emerging
24 Account. The Electricity and Natural Gas Committee is
25 recommending several revisions to the Energy Commission's

1 Guidebook for the Renewable Energy Program Volume 3.

2 And we'll hear what these recommendations are.

3 MR. HERRERA: Good morning, Commissioners. My
4 name is Gabe Herrera. I'm here with Sandy Miller. We're
5 here to talk about some proposed changes that have been
6 recommended by the Electricity and Natural Gas Committee
7 for the emerging renewable buy-down program.

8 Those changes would go into effect on the
9 Guidebook Volume number 3. And Sandy Miller is here to
10 just briefly give you an overview of what those are and to
11 answer any questions.

12 MR. MILLER: Okay. We have, on the notice that
13 was sent out, a number of proposed changes. The first
14 change would be clarifying the definition of grid
15 connection to allow customers to give us something other
16 than a utility bill. It's instead of -- as another source
17 to show that they're grid connected.

18 Another change is to allow customers to install
19 an eligible system up to ten kilowatts and not have to
20 provide any documentation that this is going to be more
21 than their system size. It's in conformance with SB 90
22 language now, identifying a small system.

23 Another change is providing, potentially,
24 developers who may come in to reserve a number of
25 reservations, let's say, for a housing development.

1 Additional time, if necessary, in order to give them more
2 time to install the systems.

3 The fourth one is very similar to the first one.
4 It deals with -- actually I got that one in reverse there,
5 the one I told you about on number one is actually number
6 four. And that's basically giving a customer another
7 means of providing verification that they're connected to
8 the grid.

9 The first one is just -- I apologize, we have to
10 go back to grid connection on the first one. We wanted
11 to -- SB 90 has some language in it that requires
12 customers to be grid connected. And we basically provided
13 some additional information in there to provide it -- to
14 make it as flexible for customers as possible in order to
15 meet the requirements of being grid connected.

16 Going back to number five, basically, we're going
17 to simplify the reservation forms.

18 Number six is one of the major changes that we're
19 having, that we're proposing, and that's to maintain the
20 buy-down rebate levels at \$3 a watt for small systems or
21 50 percent of total cost, whichever is less, and to
22 maintain the \$2.50 a watt or 40 percent of total cost for
23 systems ten kilowatts or larger until further notice.

24 Previously, we had a declining block structure
25 and it was -- it started at \$3 a watt and we were going

1 down. We've had dramatic increase in reservations in to
2 the program in the last several months, and otherwise we
3 would be going down to the \$2.50 watt rebate level now.
4 And the Committee approved the change -- keeping that \$3 a
5 watt level constant until further notice.

6 Number seven is raising the maximum rebate level
7 to two and a half million dollars per project. Presently,
8 we have a million dollars maximum rebate per project. In
9 some cases, if the customer does have on-site load, which
10 would allow them to put a larger system up that we feel
11 that the program here it is eligible to larger customers,
12 so we feel that this would provide some larger customers
13 the additional flexibility to put in a bigger system if
14 their on-site load supports that.

15 Number eight on the list is allowing contractors
16 with Class B General Contractor's License to be eligible
17 to, at least for the rebates at their cost, to install
18 these systems. The reason there, is that a general
19 contractor, which is your Class B, by California
20 Contracting Law, is eligible to install these systems if
21 they are bidding on something with two or more unrelated
22 traits.

23 So the existing contract law in California would
24 allow them otherwise to do that. So this change basically
25 puts our program more in conformance with the contractor

1 license law.

2 And, finally, we're making some other conforming
3 and clarifying changes. I want to just touch back on the
4 grid connection change that we proposed earlier, the
5 intent of this grid connection proposal is not to
6 supercede any other laws or requirements of electric
7 service providers or any other regulations or requirements
8 regarding sales of electricity into the grid.

9 So we want to make that clear that we're not
10 trying to provide any special loophole or anything like
11 that. This basically would be in conformance with the
12 existing laws and regulations for electricity service
13 providers.

14 CHAIRPERSON KEESE: Thank you. Any questions
15 from the Commissioners?

16 COMMISSIONER PERNELL: I have a question, Mr.
17 Chairman.

18 CHAIRPERSON KEESE: Commissioner Pernell.

19 COMMISSIONER PERNELL: On the number eight where
20 you got the general building contractor, general
21 contractor, to bring this into conformance with the State
22 Contractor's Licensing Board, who installs them now?

23 MR. MILLER: Presently, we allow contractors,
24 electrical contractors, with a C-10 license or solar
25 contractors, which is a C-46 license, to install the PV

1 systems. A Class A general engineering contractor's
2 license is potentially eligible to install the systems
3 too. However, we have -- the language in here basically,
4 which would -- in certain cases, a Class A license
5 contractor would not be eligible, presently, to install on
6 a residential system.

7 MR. HERRERA: If I could just touch on that
8 point, Commissioner Pernell. Right now the guidelines
9 allow for and require a contractor to be licensed. What
10 this provision does is expand the set of contractors who
11 may install the system. We just recognize that there are
12 contractors besides those identified in the guidelines
13 currently that can install systems adequately now.

14 COMMISSIONER PERNELL: Right. You just answered
15 my second question, was, it is required for them to have a
16 license? And before it was specialty licenses and now
17 this is a general builder's license, so you're adding to
18 expanding the license arena?

19 MR. HERRERA: That's correct. One note, you
20 don't have to have a license to install your own system.
21 So a homeowner, for example, could install his own system.

22 COMMISSIONER PERNELL: Well, that brings up
23 another question. And that is, if I'm a homeowner and I
24 go out and install my own system, do I get paid for it
25 before you know or we know whomever is checking that it's

1 working? When did you get these funds?

2 MR. HERRERA: Well, we get verification on these
3 systems, most of which require some sort of building
4 permit. And what we do is require the final signed off
5 building permit that verifies that the system has been
6 installed and installed correctly.

7 COMMISSIONER PERNELL: So the local building
8 department.

9 MR. HERRERA: Yes.

10 COMMISSIONER PERNELL: Thank you, Mr. Chairman.

11 CHAIRPERSON KEESE: Do I have a motion?

12 COMMISSIONER PERNELL: Mr. Chairman, I move this
13 item.

14 COMMISSIONER ROSENFELD: Second.

15 CHAIRPERSON KEESE: Motion by Commissioner
16 Pernell, seconded by Commissioner Rosenfeld.

17 Mr. Myers.

18 MR. MYERS: Good morning, my name is Bill Myers.
19 I live in Kenwood, California. As a concerned citizen and
20 an electrical engineer with 30 years of electric utility
21 industry experience, I'm contemplating the installation of
22 a 10 kw photovoltaic system at my home in time to help
23 California this summer.

24 The 10 kw PV should provide about 18,000 kilowatt
25 hours of electricity annually, which is still a little

1 less than I am consuming, but is the maximum allowable
2 under the net metering laws. The installed cost would be
3 between \$80,000 to \$100,000. And the existing CEC
4 Emerging Renewables buy-down program would provide a
5 rebate of \$30,000.

6 Even with this incentive, the State of California
7 is still not making the investment attractive. Even if my
8 net cost for PG&E electricity were to double, the payback
9 period for my investment would be over 20 years. This
10 does not sound like a plan to encourage Californians to
11 install PV in time for this summer's problem.

12 PV, as I'm sure you know, is an environmentally
13 friendly electricity source. It does not require natural
14 gas. Unlike most of the new power plants currently being
15 installed, PV produces most of its energy during the time
16 of day when California energy consumption is at its
17 highest. As distributed generation on homeowner's roof
18 tops, PV does not clog the transmission system.

19 If homeowners had effective incentives to install
20 PV now, it could seriously ease our impending crisis this
21 summer. Please understand that I am in no way apart of
22 the PV industry, so this is not a self-serving pitch for
23 corporate welfare. I simply believe that PV can be a very
24 important part of easing our crisis this summer, and I am
25 here to solicit your support.

1 Any questions.

2 CHAIRPERSON KEESE: Thank you. I do have a
3 comment, but why don't we hear from staff first.

4 MR. HERRERA: Just a quick couple comments to Mr.
5 Myers' point. Point number one is a number of the changes
6 that we're implementing today, hopefully implementing
7 today, would make it easier for consumers to put larger
8 systems on their homes and therefore make it more cost
9 effective in terms of return.

10 The second point is that there is a number of
11 bills pending right now that would provide the Energy
12 Commission with more money to increase the funding under
13 this program, notably AB 37, implements an additional \$50
14 million for the emerging buy-down program, and would allow
15 the Energy Commission to increase the rebate levels from
16 the current levels of \$3 for small system and \$2.50 for
17 large systems up to some amount.

18 CHAIRPERSON KEESE: Is that a statutory limit
19 that we have now \$3?

20 MR. HERRERA: No, what it is is that provision
21 comes from SB 90 that indicates the Energy Commission
22 should initially establish the rebate values and that
23 those values shall decrease over the term of the program.
24 So because the Commission started at \$3 and then started
25 reducing --

1 CHAIRPERSON KEESE: But we did get legislative
2 approval of that \$3 number, didn't we? Did we go back and
3 get the legislative approval?

4 MR. HERRERA: We didn't have to go back and
5 get -- we got discretion from the Legislature to fix an
6 amount and then we were suppose to reduce the amount as
7 program continued.

8 CHAIRPERSON KEESE: So --

9 MR. HERRERA: So AB 37X --

10 CHAIRPERSON KEESE: So having started at \$3, we
11 don't have the ability to go above \$3?

12 MR. HERRERA: Yes.

13 CHAIRPERSON KEESE: Thank you. You know, I have
14 great empathy in this area and I am familiar with programs
15 that have been adopted, I believe, in both Japan and
16 Germany to, over a stepped period of time, generate ten
17 percent of their nation's electricity out of photovoltaic,
18 which requires a major commitment over an extended time
19 period compatible with the development of the industry. I
20 would be supportive of -- I am supportive of that.

21 Mr. Myers, as I'm sure you're aware, we're in a
22 number of -- we have a number of initiatives going right
23 now to meet the needs of California in the short-term. I
24 believe this is a long-term effort, and I look forward to
25 the day when we have a legislative forum that can accept

1 discussion of the long-term efforts. I don't believe that
2 this is an appropriate issue to put in the short-term
3 forum.

4 Mr. Rosenfeld.

5 COMMISSIONER ROSENFELD: I guess I'll make
6 another remark to Mr. Myers, which is really along the
7 same line. I think all of us support feeding PV research
8 as fast as possible. It has all the virtues you
9 mentioned.

10 But in terms of short-term, you, yourself, talked
11 about tens of thousands of dollars for a house. If we
12 were to try to think about ten million houses in
13 California, we'd be talking about \$20 to \$50 billion.
14 We're not going to do that by this summer. There are a
15 lot more cost effective things to do. If we were to take
16 Commissioner Keese's ten percent, we would still be
17 talking \$20 billion. You are going to complete \$10 to \$20
18 billion worth of work by this summer. I think you have to
19 distinguish between long-term and short-term.

20 CHAIRPERSON KEESE: Thank you.

21 Do we have a motion? We have a motion and a
22 second?

23 Any further conversation here?

24 Any further public comment?

25 All in favor?

1 (Ayes.)

2 CHAIRPERSON KEESE: Opposed?

3 Adopted four to nothing.

4 Thank you for your comments.

5 Item 8, Los Medanos Energy Center. Possible
6 approval of the Committee's proposed decision on Calpine's
7 amendments to the Los Medanos Energy Center for relocation
8 of the western transmission station.

9 COMMISSIONER LAURIE: Mr. Chairman, question.
10 There is reference to the term transition and reference to
11 the term transmission. My understanding is that the word
12 transition station is the correct terminology that we are
13 dealing with a transition as opposed to a transmission
14 station, is that right?

15 MS. GEFTER: That's correct.

16 CHAIRPERSON KEESE: Ms. Gefter.

17 MS. GEFTER: This item deals with an amendment to
18 the Los Medanos Energy Center regarding their western
19 transition station, which is the tower where the
20 underground line emerges and goes over ground, overhead.

21 CHAIRPERSON KEESE: You have to get real close to
22 that microphone.

23 MS. GEFTER: The Los Medanos Energy Center was
24 certified in August 1999 as a Pittsburgh district energy
25 facility, which was then owned by Enron.

1 Subsequently, Calpine purchased the project Enron
2 and renamed it Los Medanos. Calpine expects commercial
3 operation to begin July 8th, 2001 this summer.

4 When Calpine purchased the Los Medanos Energy
5 Center, the project included a 40-foot transmission
6 easement that was granted by the City of Pittsburgh.
7 During project construction, Calpine's engineers
8 determined that the easement was not large enough to
9 accommodate the transition structure and all the
10 underground wiring that had to go with it and they moved
11 the location of this transition station about several
12 hundred feet from the original certified location.

13 The relocation was not indicated to either the
14 City of Pittsburgh or to the Commission until after it was
15 about 95 percent built. At that point, Calpine
16 voluntarily paid the maximum fine of \$75,000 to the
17 Commission and worked with the City of Pittsburgh to come
18 up with an agreement regarding mitigation for moving the
19 transition station.

20 The Committee that was assigned to this
21 amendment, Commission Moore was presiding and Chairman
22 Keese was the associate member, conducted a hearing in
23 Pittsburgh on this issue on February 8th, and issued a
24 proposed decision on February 22nd, in which the Committee
25 recommended approval of the amendment to relocate the

1 transition station.

2 Staff analyzed the amendment and proposed a new
3 condition, Land 8, which requires information from the
4 City regarding a new easement for the transition station.
5 Staff also proposed a revised condition, Vis 9, with
6 respect to Visual Resources to provide additional
7 landscaping to screen the new transition station.

8 The proposed decision incorporates the mitigation
9 that the City and Calpine have agreed to. And the
10 Committee has recommended approval of the amendment based
11 on the following, that the transmission line has already
12 been energized in anticipation of the project's commercial
13 operation start date in July, and the City will grant a
14 new easement based on the agreed upon mitigation plan.

15 Calpine is here today and would like to make some
16 comments. Chris Ellison, their attorney, is here to
17 address the Commission. Also staff is available to answer
18 questions.

19 CHAIRPERSON KEESE: Thank you.

20 Mr. Ellison.

21 MR. ELLISON: Thank you. Chris Ellison, Ellison,
22 Schneider & Harris on behalf of Calpine. To my right is
23 Susan Strachan who is also available to answer questions
24 and has worked on this project.

25 Let me say, first of all, that Calpine supports

1 the Committee's proposed recommendation. We support the
2 staff's new conditions. I would address two -- bring two
3 things to your attention. One is that as part of
4 Calpine's agreement with the City of Pittsburg in addition
5 to the \$75,000 fine, that Ms. Gefter referred to, Calpine
6 will the city \$1,350,000 as compensation for the impact to
7 the city property which might other wise have been
8 developed for another use.

9 Calpine will also pay an additional \$500,000 in
10 subsidized energy costs to entice the location of a new
11 company into the area. And there is a conditional
12 provision for the possible payment of an additional
13 \$1,118,000 -- actually \$1,118,317.32 just a precise figure
14 in the Committee's order.

15 CHAIRPERSON KEESE: It sound like our \$75,000
16 fine, maximum fine, is much too low.

17 (Laughter.)

18 MR. ELLISON: Well, suffice it to say that
19 Calpine has worked hard to satisfy the interests of the
20 city of Pittsburg, and I believe we've done that. There
21 is a representative, I believe, of the City here today, if
22 you have questions regarding that.

23 Ms. Gefter has asked us to address two issues
24 raise in a very recent comment from Californians For
25 Renewable Energy on this issue. And those comments

1 reference a newspaper article which discusses a concern
2 that the school district will not receive the same impact
3 fees as a result of their being fewer residential homes
4 constructed on this parcel than would have been the case
5 had the transition station not had to have been moved.

6 The response is that the impact fees are to
7 compensate the school district for the additional students
8 that result when residential housing is constructed. So,
9 yes, it's true that there is a loss of the impact fees,
10 but there is also a loss of the impact for which those
11 fees are intended to compensate.

12 I would mention in passing, however, that as part
13 of Calpine's program, there is a million dollar grant
14 program for various community projects and activities
15 that's administered by a panel of locally elected
16 officials and other representatives in the community. It
17 is possible for the school district to make an application
18 to that grant program. And I think that should address
19 the concerns that have been raised CURE. We'd be happy to
20 answer any questions that you have. We do support the
21 Committee's proposed decision and the staff's
22 recommendation.

23 Thank you.

24 CHAIRPERSON KEESE: Thank you.

25 Do the commissioners have any questions on this

1 item?

2 COMMISSIONER PERNELL: I have a question.

3 CHAIRPERSON KEESE: Commissioner Pernell.

4 COMMISSIONER PERNELL: As I understand all the
5 local jurisdictions have signed off on this and approved
6 the conditions?

7 MR. ELLISON: That's correct.

8 COMMISSIONER PERNELL: Okay.

9 COMMISSIONER ROSENFELD: Can I move?

10 CHAIRPERSON KEESE: You're welcome to move it.

11 COMMISSIONER ROSENFELD: I move that we approve
12 Calpine's amendment number 6 for the Los Medanos Energy
13 Center to relocate the western transition station and
14 adopt the Committee's proposed decisions, which includes,
15 has been mentioned, Land 8 and Vis 9.

16 COMMISSIONER LAURIE: I'll second for purposes of
17 discuss, Mr. Chairman.

18 CHAIRPERSON KEESE: Motion by Commissioner
19 Rosenfeld, seconded by Commissioner Laurie.

20 COMMISSIONER LAURIE: A question of Ms. Gefter,
21 the issue of the school district, is that an issue in
22 front us today?

23 MS. GEFTER: It is not.

24 COMMISSIONER LAURIE: It is not?

25 THE WITNESS: It is not. It was raised by public

1 comment by CARE, Mr. Mike Boyd.

2 COMMISSIONER LAURIE: Just to note. I concur
3 with Mr. Ellison's explanation. It's an impact fee to
4 cover the impact. If there's no impact, there's no fee.
5 The school district does lose ADA. So to the extent that
6 they want more kids, you get more ADA, well, they have
7 fewer kids, but they're not making that argument.

8 I guess we still have to have public input on the
9 question, Mr. Chairman.

10 CHAIRPERSON KEESE: Thank you. We have a motion
11 and a second. Do we have a public comment?

12 Ms. Gefter, coming from behind.

13 PUBLIC ADVISER MENDONCA: This is Roberta
14 Mendonca, the Public Adviser. And the public comment that
15 was received has already been somewhat addressed. It was
16 filed by Californians for Renewable Energy, which is CARE.

17 And his recent filing on this today is that he
18 has a previously filed complaint with the Environmental
19 Protection Agency alleging that the relocation will
20 further inflict disparate impacts on low income and
21 minority children in the Pittsburgh Unified School
22 District, which was mentioned by Mr. Ellison.

23 His point today is to ask you to delay your
24 decision on the this amendment in the hopes that they will
25 be able to settle their -- they, meaning CARE, will be

1 able to settle the lawsuit. And they feel that by going
2 ahead with the amendment today, you conclude that
3 incentive to settle.

4 CHAIRPERSON KEESE: Thank you.

5 PUBLIC ADVISER MENDONCA: And these comments were
6 made available and docketed.

7 CHAIRPERSON KEESE: Yes, we received the copy of
8 the comment.

9 Any further public comment?

10 We have a motion and a second?

11 All in favor?

12 (Ayes.)

13 CHAIRPERSON KEESE: Opposed?

14 Thank you, a rather expensive little mistake
15 there.

16 Item 9, United Golden Gate Power Project, Phase
17 One. Possible consideration Of the Presiding Member's
18 Proposed Decision for licensing Phase 1 of the United
19 Golden Gate Power Project and consideration of any
20 Committee-proposed to the PMPD.

21 COMMISSIONER LAURIE: Mr. Chairman, good morning.
22 We need Mr. Fay. Mr. Chairman, goad the United Golden
23 Gate Committee made up of Commissioner Rosenfeld and
24 myself, has for the past four months, considered the AFC
25 for Phase 1 of the United Golden Gate Power Project

1 proposed by El Paso Merchant Energy Company.

2 The project was reviewed under the four month
3 expedited permitting process, established by AB 970 and
4 contained in Sections 25552 of the Public Resources Code.
5 This section shortens the time Energy Commission has to
6 act on the application for a qualifying simple cycle power
7 plant which requires the Commission to grant a license to
8 the project, which meets certain criteria.

9 Today, we're proposing for adoption the
10 Committee's Presiding Member's Proposed Decision along
11 with certain errata and minor committee amendments which
12 are contained in the document before you in strike out and
13 underlined format. The document entitled amended PMPD
14 contains the Committee's determination regarding the AFC
15 for the project, and includes the findings and conclusions
16 required by law was based exclusively on the evidentiary
17 record established at the hearings.

18 The Conditions of Certification contained in the
19 proposed decision will ensure that the project, as
20 designed, will be constructed and operated in a manner
21 necessary to protect the public health and safety and
22 provided much needed electrical generation for the San
23 Francisco Peninsula and preserving the environmental
24 quality.

25 The Phase 1 of the project consists of a nominal

1 51 megawatt natural gas fired simple cycle power plant.
2 It is proposed for construction at the San Francisco
3 International Airport in what is presently a paid parking
4 lot near the United Airlines maintenance facility and next
5 to an existing cogen plant.

6 Because of the generation infrastructure already
7 at the site, all construction for the project will occur
8 within the power plant site.

9 And I recommend the proposed decision to the full
10 commission. At this time, I'd like to ask Gary Fay, the
11 Hearing Officer, to offer further comment. I'd also,
12 perhaps prematurely, note the outstanding work of staff in
13 order to get this thing to us in a proper and timely
14 manner.

15 Mr. Fay.

16 MR. FAR: Thank you, Commissioner Laurie. As you
17 mentioned, this is the first power plant under the
18 four-month expedited licensing process. And the Committee
19 has presented what is entitled the amended PMPD. And that
20 was as a convenience to the Commission and the public to
21 offer it in strikeout and underline format the entire PMPD
22 with Committee amendments.

23 These amendments are editorial in nature or
24 clarifying. And to the extent that there are any
25 substantive changes at all, they are confined to the last

1 three conditions of certification under air quality, which
2 were proposed in the Final DOC, Final Determination of
3 Compliance, issued by the Bay Area Air Quality Management
4 District. And I understand those were in response to
5 public comments or comments from either the CEC staff or
6 the staff of the California Air Resources Board.

7 And, of course, that was after the district had
8 had their proposed determination of compliance out for
9 public comment for 30 days.

10 In addition, I'll bring to your attention that a
11 matter was filed last night by Michael Boyd, President of
12 Californians for Renewable Energy. And he entitled it,
13 Demand to Correct the CURE Violations of the Bagley-Keen
14 Open Meeting Act.

15 He alleges two violations in the publications,
16 the Committee's document. One regarding California
17 Government Code 11125(a) that requires notice be given at
18 least ten days in advance in writing, and on the Internet
19 of any meeting such as this business meeting today of any
20 item on the business meeting.

21 That statute that Mr. Boyd sites does, in fact,
22 require notice on the Internet. However, it specifically
23 states that it shall not be implemented until July 1 of
24 this year, so it is not enforceable at this time.

25 He also argues that pursuant to Government Code

1 Section 11125.1(a) that any matter to be brought up before
2 the Commission must have been available upon request
3 without delay. And I just want to note, for the record,
4 that the amended PMPD was printed Monday morning March
5 5th. It was sent either FedEx or Overnight Mail to Mr.
6 Boyd on that day and was posted on the Internet web page
7 on that day.

8 So there was no faster way that the Commission
9 could make that available to Mr. Boyd. So I believe in
10 both cases he's mistaken and that the Commission and the
11 Committee has met statutes cited.

12 COMMISSIONER LAURIE: Do we have to take action
13 on the -- whether you call it a petition or a demand? Are
14 you recommending that the Commission take action on it?

15 MR. FAY: I'm not. And I refer you to the
16 General Counsel for advice on that.

17 CHIEF COUNSEL CHAMBERLAIN: I don't think you
18 need to take action on that. Mr. Boyd has brought to your
19 attention some statutory provisions that obviously we are
20 going to have to pay some serious attention to when they
21 become effective.

22 In this case, apparently Internet notice was
23 given eight days in advance rather than ten required by
24 this statute, and we will be sure that come July 1st we'll
25 be giving ten days Internet notice.

1 COMMISSIONER LAURIE: Thank you, Mr. Chairman.

2 Anything else, Mr. Fay?

3 MR. FAY: No that's all.

4 CHAIRPERSON KEESE: Let me ask you -- Ms.

5 Mendonca, are you bringing something up on this issue?

6 PUBLIC ADVISER MENDONCA: On this issue, I
7 believe that Mr. Fay -- Roberta Mendonca, the Public
8 Adviser. On this issue, I believe, Mr. Fay very
9 adequately addressed what was raised by Michael Boyd. The
10 only comment would be that the fact that it was timely
11 mailed when it was prepared. That gist of his comment is
12 that two days to review the PMPD is not sufficient to be
13 prepared to comment at this meeting.

14 MR. FAY: Actually, Mr. Boyd had more than 30
15 days to review it.

16 CHAIRPERSON KEESE: I was referring to the San
17 Francisco -- the City of South San Francisco request.

18 PUBLIC ADVISER MENDONCA: Okay. The Public
19 Adviser also received in the matter of United Golden Gate
20 a letter from the City Director of Public Works John
21 Gibbs.

22 And it is saying that, "The City of
23 South San Francisco has been
24 participating in the evidentiary
25 hearings process for the referenced

1 project.

2 "Among the concerns of the City
3 staff, our residents and our neighboring
4 cities is air quality, specifically air
5 quality control.

6 "It is our understanding that the
7 current monitoring station at Redwood
8 City will be the responsible location to
9 monitor the air quality from this plant.
10 The City of South San Francisco would
11 like to go on record that we are
12 requesting an additional monitoring
13 station be installed adjacent to the
14 proposed plant, paren (the City of South
15 San Francisco will assist in providing
16 space if necessary to better control the
17 plant's emissions as they affect the
18 immediate surrounding areas.)

19 "Please feel free to call this
20 office to discuss this matter at
21 (650) 877-8538."

22 And the letter was dated February 22nd.

23 CHAIRPERSON KEESE: I also received and it's more
24 of a request than anything else.

25 COMMISSIONER LAURIE: Mr. Chairman, the issue of

1 air quality and, in fact, the issue of a monitoring
2 station, was the subject of much discussion and testimony.
3 And there are basically two issues.

4 One, you have to look at the impact caused by
5 this project before you impose a condition of mitigation
6 on this project. And, two, it's a question of the
7 effectiveness or efficiency of an air monitoring station
8 at this point. I think both of those subjects are the
9 subject of discussion.

10 Mr. Fay or staff, can you amplify on that. I
11 think the question certainly is properly brought up today.
12 I would note that it had been discussed and perhaps
13 summarized.

14 PROJECT MANAGER KENNEDY: This is Kevin Kennedy,
15 the staff project manager for this project. Staff
16 certainly considered the issue of air quality in the area.
17 And in staff's analysis, we did not feel that there was a
18 sufficient impact from the project to call for additional
19 monitoring and do not feel that a monitoring station would
20 be able to detect any impacts directly from this project
21 that could be a useful thing to help gauge the background
22 concentrations in the area of the project.

23 But staff looking at this did not see that there
24 was a need for that given the impacts that we saw on the
25 project.

1 MR. BOYD: Mr. Chairman.

2 CHAIRPERSON KEESE: Mr. Boyd.

3 MR. BOYD: One quick question. Did the Bay Area
4 Air Quality Management District render any kind of opinion
5 on this?

6 MR. FAY: Yes, they did.

7 MR. BOYD: Did they concur, in effect, with --

8 MR. FAY: They did not support the request for an
9 additional monitoring station. I would point out, too,
10 that since the request of the City of South San Francisco
11 says that the monitor is for the purpose of better
12 controlling plant emissions that affect the immediate
13 surrounding area, probably the best way, based on the
14 evidence in this record, the best way to control emissions
15 that could affect the surrounding area is to monitor them
16 at the stack rather than away from the plant.

17 MR. BOYD: I noted that anomaly.

18 CHAIRPERSON KEESE: Thank you. Any further
19 comments on that?

20 Does the applicant have any comment on this?

21 MR. BROOKHYSER: Donald Brookhyser, counsel for
22 the Applicant. Let me just echo what has been said that I
23 think there was some confusion on the behalf of the public
24 as they made comments at the hearing, both with regard to
25 the use of the air monitoring stations at Redwood City in

1 San Francisco to determine the ambient existing air
2 quality conditions.

3 And I think they wanted some station closer to
4 the proposed project for the background or historical
5 data. And, of course, at this point that would not serve
6 any purpose.

7 And as Mr. Fay indicated, the representatives of
8 the Bay Area Air Quality Management District indicated
9 that anything away from the actual project itself would
10 not very accurately monitor the impact of this particular
11 plant. And you already have conditions of certification
12 proposed that add a monitor at the stack itself.

13 CHAIRPERSON KEESE: Thank you. Any other public
14 comment on this issue?

15 Could I have a motion?

16 COMMISSIONER LAURIE: Mr. Chairman, I would move
17 the adoption of the Presiding Member's Proposed Decision
18 as modified by the errata with the conditions and findings
19 contained therein.

20 COMMISSIONER ROSENFELD: Second.

21 CHAIRPERSON KEESE: Motion by Commissioner
22 Laurie, second by Commissioner Rosenfeld.

23 All in favor?

24 (Ayes.)

25 CHAIRPERSON KEESE: Opposed?

1 Adopted four to nothing.

2 Thank you.

3 COMMISSIONER LAURIE: And again, Mr. Chairman,
4 this was a four-month process. And I think staff was
5 really exemplary.

6 CHAIRPERSON KEESE: Thank you. A trial run for
7 our future efforts in this regard.

8 COMMISSIONER LAURIE: We'll see how they handle
9 Phase 2.

10 (Laughter.)

11 COMMISSIONER LAURIE: Thank you.

12 CHAIRPERSON KEESE: Thank you.

13 Item 10, Emergency Power Plant Siting
14 Regulations. Possible Consideration and Adoption as
15 Permanent Regulations of the Current Emergency Power Plant
16 Siting Regulations for the 6-month Application for
17 Certification Process.

18 The current emergency regulations were adopted,
19 effective November 27th, 2000 in response to the
20 requirements of AB 970.

21 Mr. Tooker.

22 MR. TOOKER: Good morning, Commissioners. My
23 name is Chris Tooker from the Power Plant Siting division.
24 The language you have before you today, as you point out,
25 are proposed regulations for language for permanent

1 regulations for a 6-month licensing process. The language
2 is substantially the same as the language you adopted as
3 emergency regulations in November with four changes.

4 The Siting Committee held a workshop on February
5 6th to discuss the potential adoption of these regulations
6 as normal regulations. And at that workshop the staff
7 identified a few changes, which are indicated in your
8 packet dated March 6th.

9 The first change on page three was to strike
10 Section 2(c), which is to require, as a part of filing an
11 application, the provision of emission offset reduction
12 credit option contracts. That was discussed at the
13 workshop and agreed to and accepted by the Committee.

14 The second item proposed by staff and agreed to
15 was on the following page under paragraph H originally
16 having to do with hazardous materials management
17 information filing requirements. We changed that section
18 basically to provide applicants with greater flexibility
19 for demonstrating that a project in a remote area not
20 withstanding the use of hazardous materials, such as
21 anhydrous ammonia, could still demonstrate that they would
22 not have a significant adverse impact on the public. That
23 item was also discussed at the workshop, agreed to by the
24 participants and accepted by the Committee.

25 In addition to that, subsequent to that workshop,

1 the Office of Administrative Law discussed with us that
2 proposed change and has suggested some editorial change to
3 the language in the hazardous materials section, which
4 is -- and that proposed alternative language is before you
5 today. It does not change the substance of that section.
6 It's only an editorial change for purposes of complying
7 with OAL's regulations.

8 The other two changes in the document are
9 corrections of typographical errors. On page nine, at the
10 top, Section B the misspelled word incorporate is
11 corrected. And on page 11, Section 2030(c)(2) misspelled
12 certification is corrected.

13 CHAIRPERSON KEESE: Thank you.

14 MR. TOOKER: And with those clarifications, we
15 present the regulations for your consideration.

16 CHAIRPERSON KEESE: Thank you. Do we have a
17 motion on the regulations?

18 COMMISSIONER ROSENFELD: Move approval.

19 COMMISSIONER LAURIE: Second.

20 CHAIRPERSON KEESE: Motion by Commissioner
21 Rosenfeld, seconded by Commissioner Laurie.

22 Do we have public comment?

23 MR. CHADDOCK: Yes. My name is Chris Chaddock.
24 Pardon me, I didn't quite see the exclusion for anhydrous
25 ammonia, but under federal regulations there is no safe

1 standard for exposure to anhydrous ammonia, 25 parts per
2 million under federal guidelines. The State said it
3 causes permanent lung damage, 200 parts per million keeps
4 a person from breathing, just in case you weren't aware of
5 some of these very stringent toxic applications to
6 anhydrous ammonia.

7 Thank you.

8 CHAIRPERSON KEESE: And you're suggesting?

9 MR. CHADDOCK: That there be a greater review on
10 storage of anhydrous ammonia instead of aqueous ammonia on
11 the site of a power plant.

12 CHAIRPERSON KEESE: Staff comment?

13 MR. TOOKER: I can have technical staff come
14 forward if we want to discuss it in more detail, but I
15 believe that the language included in the regulations
16 regarding the demonstration of lack of impact on the
17 public, addresses those concerns. And it does it
18 consistent with federal guidelines as to evaluating
19 off-site consequences of exposure to hazardous materials
20 including anhydrous ammonia.

21 Thank you.

22 MR. CHADDOCK: Thank you.

23 CHAIRPERSON KEESE: We have a motion and a
24 second. Any further public comment?

25 All in favor?

1 (Ayes.)

2 CHAIRPERSON KEESE: Opposed?

3 Adopted four to nothing. Thank you.

4 CHAIRPERSON KEESE: Item 11, Energy Commission
5 Heavy-Duty Vehicle Infrastructure Program. Possible
6 approval to subvene up to two and a half million dollars
7 of grant funding to seven qualifying air districts who
8 will solicit infrastructure applications and expend the
9 funds in accordance with the Program requirements.

10 MR. KOYAMA: Good morning, Mr. Chair. I'm Ken
11 Koyama, from the transportation technology office. These
12 seven grants totaling two and a half million dollars would
13 go to air districts participating in the Carl Moyer
14 heavy-duty program for infrastructure projects. The two
15 and a half million dollars was allocated to the Energy
16 Commission in the Budget Act and is not part of the
17 Governor's executive order to the ARB to fund emission
18 offset projects.

19 These grants to the air districts will allow air
20 districts to funnel alternative fuel infrastructure
21 projects to support new heavy-duty alternative fuel low
22 emission trucks and buses. This is the second year of
23 this program. The previous year we funded \$2 million
24 worth of infrastructure projects.

25 Staff requests approval of these grants.

1 CHAIRPERSON KEESE: Thank you.

2 Do we have a motion?

3 COMMISSIONER ROSENFELD: So moved.

4 COMMISSIONER LAURIE: Second.

5 CHAIRPERSON KEESE: Motion Commissioner

6 Rosenfeld, second Commissioner Laurie.

7 Any public comment?

8 Any further comment here?

9 All in favor?

10 (Ayes.)

11 CHAIRPERSON KEESE: Opposed?

12 Adopted three to nothing.

13 COMMISSIONER MOORE: I didn't vote on that, Bill,
14 because I wasn't there for the discussion.

15 CHAIRPERSON KEESE: Thank you Michael for joining
16 us. Commission Moore has joined us. And I can tell you
17 that our phone system is working wonderfully better than
18 it has on previous occasions this week. I didn't even
19 know you were there.

20 COMMISSIONER LAURIE: Mr. Chairman, Commission
21 Moore, how long are you going to be on the line?

22 COMMISSIONER MOORE: I can be on the line about
23 ten minutes total before they repack us and send us out
24 again.

25 COMMISSIONER LAURIE: Do you want to take Item 16,

1 Mr. Chairman.

2 CHAIRPERSON KEESE: Yes. That's what we will do.

3 We have completed Item 11. We will take up, at this time,
4 Item 16.

5 Item 16, Emergency Revisions to Licensing
6 Regulations. Possible adoption of Emergency Revisions to
7 Licensing Regulations.

8 Commissioner Laurie.

9 COMMISSIONER LAURIE: Thank you.

10 Mr. Chairman, I'd like to offer a couple of
11 initial comments. One, what is before you, I know
12 Commissioner Pernell is not currently present in the
13 commission.

14 When is Commissioner Pernell going to be
15 returning?

16 We have to start.

17 What is before you is a proposal to modify
18 regulations on an emergency basis. I believe that there
19 has been an expression of an energy emergency in
20 California. The Governor has formally expressed it. The
21 Legislature has formally expressed it. I think the
22 President of the United States has expressed formally
23 expressed it. The international community seems to
24 believe that to be the case.

25 And many, in fact, look to the issue of

1 generation, new generation, rightly or wrongly as the cure
2 for that emergency. Thus to discuss these issues under
3 the conditions of emergency, I believe to most
4 appropriate.

5 It is correct that I have not submitted nor have
6 I asked staff to submit the legal rationale for adoption
7 of any modifications under such emergency, at this time.
8 And the reason is that it is not my intent to adopt
9 regulations today. It is my intent to present the
10 proposals for discussion today. It is my intent to not
11 get into specific verbiage today.

12 It is correct that I presented some specific
13 language modifications. It is not my intent that language
14 be deemed to be legally acceptable. That language has not
15 gone through counsel, and I acknowledge that, and I think
16 it has to go through counsel. I think to some extent
17 there are substantial drafting errors.

18 My intent was to bring the issues before the
19 Commission for discussion. And then to the extent that
20 the Commission desires to move forward on any or all of
21 the items being proposed, that the matter be referred back
22 to the Siting Committee for further action.

23 There are four main points.

24 Oh, I'd also like to note that it is clearly my
25 intention that any proposals acceptable to the Commission

1 and adopted by the Commission not be applicable to any
2 existing current case. That is not my intention. It
3 never was my intention. It is my intention that we
4 address these issues today and implement them as soon as
5 feasible, but certainly not impose them on any case
6 currently under consideration.

7 There are four main points that are the subject
8 of the discussion. First, there are some cleanup and I
9 won't address those today. But one deals with the
10 question of what extent should we continue with mandatory
11 cross examination and sworn oral testimony. The second
12 deals with the public notice for staff meeting
13 discussions. The third deals with local LORS requirements
14 and the. And the fourth deals with clearing up ambiguity
15 in the question of what constitutes the evidentiary
16 record.

17 On the first point, the issue of cross
18 examination and sworn testimony. Currently our
19 regulations require, mandate that all parties be given the
20 opportunity to cross examine witnesses. In my experience,
21 I find that the public interest is not always served by
22 that rule, that cross-examination is valuable in selected
23 instances, but not all. And I believe in many cases it
24 ends up being a burden on the process and on the public.

25 Therefore, as a concept I propose that permitting

1 cross examination be discretionary with the case
2 committee. So what would occur in my proposal is that all
3 parties submit their written testimony as they currently
4 do, that testimony be submitted under oath, which is easy
5 to accomplish, and then the Committee can determine the
6 points of conflict between all of that testimony and
7 determine the value and benefit of cross examination. And
8 to the extent that they wish to permit it, the rule would
9 allow them to do so.

10 That's item 1. So basically what I'm asking for
11 is that rather than making cross examination mandatory,
12 that it be discretionary with the Committee.

13 Two, the issue of public notice. This is an
14 issue that's been discussed over and over, over the last
15 few years. Our rule, depending upon who's reading it,
16 seems to limit the opportunities for staff to have
17 nonpublic meetings with any party, and that includes any
18 public intervenor or the applicant.

19 There have been earlier proposals to liberalize
20 those rules. Those proposals have not been acceptable in
21 the past. Additional proposals were discussed in the
22 Siting Committee with some ideas, frankly, developing into
23 a consensus. But, again, those have not as yet been put
24 before us.

25 My proposal is that there be unlimited

1 discussions permitted between the parties. Of course, the
2 Commissioners and their advisors are not parties they are
3 decision makers. In my experience, open and free private
4 discussions are beneficial to the process, not inimical to
5 the process.

6 I have participated in probably 3,000 or so
7 public hearings throughout my career, all of which involve
8 these kinds of staff discussions. And I have never, on
9 any occasion, whether I was representing a government
10 entity or representing a private party, found any abuse by
11 any staff member in 25 years of professional work in that
12 regard.

13 And I feel as long as all that is coming from
14 staff is a recommendation to the decision makers, then it
15 is very difficult to argue that the process has been
16 compromised.

17 CHAIRPERSON KEESE: One second.

18 Commissioner Moore.

19 COMMISSIONER MOORE: Yes.

20 CHAIRPERSON KEESE: Do you still have another
21 five?

22 COMMISSIONER MOORE: Yeah, I do.

23 COMMISSIONER LAURIE: I will go quickly through
24 my two remaining items, then I'll open it up for initial
25 comment.

1 Three, local LORS. Local LORS is a big issue.
2 It's a confusing issue for us. We know that in the timing
3 of the project, it creates challenges because more often
4 than not, as a matter of fact, in all cases where a
5 discretionary action is required by the local government,
6 they generally do not move until they get either our PMPD
7 or FSA, which is at the end of our project.

8 And also we're put into the position of needing
9 to override if you desire to approve a project, if there
10 is a local governmental desire. My proposal is that to
11 recognize that it's the legislation that's determined
12 these facilities to be a, for all practical purposes, of
13 such import that they qualify almost as governmental type
14 buildings.

15 When one seeks to place a governmental type
16 building, whether it's federal, State, local or school,
17 those buildings need not be consistent with local LORS,
18 rather the processes, the local governmental agencies are
19 asked for input and their comments are incorporated into
20 that actual construction of the facility. And that is my
21 proposal. This would require a Warren Alquist
22 modification.

23 So my proposal is that the local governments be
24 consulted but that the requirement that a specific finding
25 be made of local LORS compliance be deleted.

1 And finally number four, both the public and I
2 think our staff and the Commissioners are confused as to
3 what eventually goes into the record. When the public
4 comes up to comment they get concerned that their comments
5 will not be heard. I simply propose regulatory
6 modification that will ensure that the hearing record is
7 incorporated into the definition of the evidentiary
8 record. And this is part of what is considered when
9 decisions are made.

10 That is a quick summary of the four basic items.
11 As long as we have Commissioner Moore on the phone, Mr.
12 Chairman, I would defer to him at this point.

13 CHAIRPERSON KEESE: Michael.

14 COMMISSIONER MOORE: Thanks, Mr. Chairman. I
15 have a couple of brief comments in an opening nature and
16 then I'll let you get on to your discussion. First of
17 all, I think that Bob has provided some thoughtful
18 interest of ideas to get us moving on making the process
19 more efficient as we move forward into the future. We've
20 got a lot changes in the Warren Alquist Act that we've got
21 to look at. I think we've got a lot of changed
22 circumstances that face us today.

23 Certainly, the conditions that we face in siting
24 power plants today are not in any way similar to the
25 conditions facing the energy world 25 years ago.

1 So with that, I tell you that on the for four
2 items that Bob just talked about, and I think I bring
3 about as much experience as he does in local government,
4 which is as Bill Chamberlain points out in his comments to
5 us, a related world, it's not the same. But I think it's
6 instructive as far as how to conduct hearings, how to get
7 evidence.

8 Generally I'm supportive of what Bob's saying. I
9 think that there's a need to try and not just streamline
10 the process, but make it more transparent. I got ahold of
11 the brief that Alan Ramos submitted to us. And, frankly,
12 I think that Alan is on the wrong track here. There's no
13 intention, that I see, to try and obfuscate the process in
14 Bob's saying here. There's a need to try and make the
15 process work better.

16 And as a consequence now having handled several
17 cases for the Commission myself, where I think that we
18 could benefit by relaxing the rules as far as discussion
19 between parties goes, clearly the last point that Bob made
20 about the evidentiary record is important to the general
21 public, there's no reason to be so strict about it, I
22 think, as in the Act.

23 With regard to cross examination, frankly, almost
24 all of you know perfectly well my feelings about formal
25 cross examination in these hearings. I think it's

1 redundant and draws out a hearing process often times
2 because of the structural nature of the way cross
3 examination is done. It tends to obfuscate the issues in
4 terms of the public. It just makes a structural cloud
5 over the way evidence is presented and doesn't make it any
6 clearer in my opinion.

7 Having said that, and I understand that there's
8 no vote in front of any of us today, my recommendation
9 would be, and I hope that you all strongly consider this,
10 to send it back to committee and let it be aired in a
11 either a rule-making or informational proceeding from the
12 Committee, and imagine that the Warren Alquist Act is a
13 leaving, breathing document that can be revitalized and
14 made better, especially in the context of all the energy
15 needs that we have.

16 So that's about as far as I can take it. I think
17 that these items are worthy of further discussion, and I
18 would recommend it to the Committee and ask you to
19 authorize Bob to hold a set of public hearings on this and
20 get the public involved in a further discussion.

21 CHAIRPERSON KEESE: Thank you, Michael for
22 joining us. Have a safe flight.

23 COMMISSIONER MOORE: Thank you. I'll talk to you
24 probably tomorrow.

25 CHAIRPERSON KEESE: Thank you.

1 COMMISSIONER MOORE: Bye-bye.

2 CHAIRPERSON KEESE: Do we have any other
3 Commissioner's care to comment at this time before we hear
4 public comment? And if we're going to hear public
5 comment, it would be nice to have blue cards.

6 COMMISSIONER PERNELL: Mr. Chairman.

7 CHAIRPERSON KEESE: Commissioner Pernell.

8 COMMISSIONER PERNELL: Mr. Chairman, I have, I
9 guess, mixed feelings about this. Certainly not about the
10 recommendation coming back to the Committee and involving
11 the public. I think that's great, and these discussions
12 will come out -- I mean if the Committee -- if it's the
13 Committee's discretion -- to bring this -- the
14 Commission's discretion to bring it back to the Committee,
15 involve the public in it, I wholeheartedly support that.
16 However, let me make some briefs comments about the
17 perception and what some of my concerns are.

18 First, the idea that we don't need to take sworn
19 testimony, I think is -- I have some concerns of that. I
20 think if someone is going to come before, is going to be
21 part of the record, we need to have them raising their
22 hands swearing that they're telling the truth, so when it
23 comes back, it's not necessarily on us. So the sworn
24 testimony I think should remain.

25 The other is just the perception of -- and I've

1 had conversation with Commissioner Laurie and it is not
2 his intent, he tells me, to limit the public participation
3 in any way. So that's comforting. I wouldn't want it
4 perceived that we're trying to limit the public
5 perception, but we Certainly don't want the process bogged
6 down. And we've had conversations about that, and I think
7 he is genuine in what he's trying the do there.

8 The other is I certainly agree and have been
9 saying about the ex parte rule, and I've been overruled.
10 So that one remains to be seen. And then on -- I guess
11 his third comment, and I would defer to legal counsel,
12 would we need an -- in order to delete the LORS, would
13 that take legislative action?

14 CHIEF COUNSEL CHAMBERLAIN: Yes, Commissioner
15 Laurie indicated that it would take legislative action. I
16 can --

17 COMMISSIONER LAURIE: And I concur with that
18 Commissioner Pernell. I think what I'd be ultimately
19 looking for is a recommendation to the Legislature in that
20 regard.

21 COMMISSIONER PERNELL: All right. And then the
22 other is having the community be part of the hearing
23 record.

24 COMMISSIONER LAURIE: Currently, when you look at
25 the regs, at least I get confused, which is easy, but I

1 think the public hearing officer's and the Commissioners
2 often are unable to simply explain to the public those not
3 participating as intervenors, but simply those commenting
4 as members of the public and providing assurances to them
5 that their comments are, in fact, part of the decision
6 maker's consideration.

7 And my proposal is just to clarify any
8 ambiguities that may exist that will make it clear,
9 perhaps in better language, that when one stands up and
10 offers comment that that comment is something that will be
11 considered by the decision makers.

12 CHAIRPERSON KEESE: Commissioner Pernell, may I
13 add to that background. We believe, having looked at this
14 issue, that it is our tradition here and our custom to
15 accept the evidentiary record even though the words of the
16 statute are different. So we have accepted the broader
17 range of testimony in the regard.

18 Secondly, in a formalized process by which the
19 Secretary of Resources approves our process, she has
20 acknowledged the fact that that is our practice and has
21 suggested that we should formalize it at the appropriate
22 time.

23 So I would think that the last item that
24 Commissioner Laurie brought up is one that does put words
25 into our regulations that incorporate our previous

1 practice and what most parties feel should be our
2 practice.

3 COMMISSIONER PERNELL: Okay, right. So if we --
4 well, I don't think that I need to debate this further,
5 if, in fact, it's going to come back to the Committee and
6 we're going have to other discussions on it.

7 But if the general public is part of the record,
8 then I think if we're going to, from a legal sense, accept
9 that, then it goes back to my point about there should be
10 sworn testimony, and I just -- Mr. Jones getting up saying
11 he doesn't like it and we incorporate that as part of the
12 record and somehow put a value on that.

13 CHAIRPERSON KEESE: I think the proposal here
14 goes perhaps contrary to that. The suggestion is that we
15 acknowledge that sworn testimony is apart of the record.
16 Now what we're saying is that unsworn testimony also would
17 be part of the record.

18 Mr. Chamberlain.

19 CHIEF COUNSEL CHAMBERLAIN: Yes. Mr. Chairman,
20 we have a definition in our statute of hearing record,
21 which includes within it the evidentiary portion of the
22 record. The hearing record is really everything that the
23 Commission hears during the course of a hearing, and it
24 really is the full hearing record including public
25 comments and agency comments, which may not be sworn, that

1 the Commission considers when you put out your proposed
2 decision.

3 I believe that that's what Commissioner Laurie is
4 proposing to make clear in the record, in the regulations
5 and I would support that, as did the Secretary of
6 Resources.

7 COMMISSIONER PERNELL: So it sounds like it's
8 something we've already been doing.

9 CHIEF COUNSEL CHAMBERLAIN: Yes. Now, there
10 is --

11 COMMISSIONER PERNELL: How long have we been
12 doing that?

13 CHIEF COUNSEL CHAMBERLAIN: -- a rule in
14 administrative law that suggests that when you are making
15 a specific finding, you need to have evidence to support
16 it that is nonhearsay evidence. And so that would go to
17 the weight that you might give a particular public
18 comment. If it wasn't sworn, you couldn't make it the
19 sole basis for your finding, but it doesn't mean that you
20 couldn't consider it and give it appropriate weight.

21 COMMISSIONER LAURIE: For example Mr.
22 Chamberlain, if a party appeared at a hearing who was not
23 an intervenor and said I live a quarter mile away from
24 this plant, and I can see this plant clearly from my
25 backyard, that is not sworn testimony, but it is

1 appropriate comment for the Committee to consider along
2 with appropriate other evidence.

3 CHIEF COUNSEL CHAMBERLAIN: Yes.

4 COMMISSIONER LAURIE: That's all I'm trying to
5 clarify, Commissioner Pernell.

6 COMMISSIONER PERNELL: Okay.

7 CHAIRPERSON KEESE: Okay. We have a list of
8 members of the public who would like to comment on this.
9 Shall we start with Kate Poole.

10 MS. POOLE: Thank you Mr. Chairman. My name is
11 Kate Poole. I represent the California Unions for
12 Reliable Energy. And I'd like to comment on three of the
13 proposed changes. The first one is the proposal to modify
14 Section 1212 of the regulations to make a party's right to
15 submit testimony and to cross examine parties
16 discretionary with the Committee.

17 We understand the desire to put limits on the
18 hearing process. Hearings can be very lengthy and,
19 frankly, mind-numbingly dull at times. However, we think
20 the hearing officer already has that discretion. And in
21 several of the proceedings that we've participated in, has
22 exercised that discretion to get the agreement of the
23 parties that they will not summarize their written
24 testimony, and to put reasonable limits on both the time
25 for direct and cross examination. We think those limits

1 have proven to have workable.

2 If the Commission is concerned about making that
3 authority more explicit, we would recommend adopting an
4 approach that is more akin to the Public Utilities
5 Commission Rule 58, which states, "To avoid unnecessary
6 cumulative evidence, the presiding officer may limit the
7 number of witnesses or the time for testimony upon a
8 particular issue."

9 We do think, however, that this proposed
10 modification goes too far. Currently, the Energy
11 Commission is required to base its decision on evidence in
12 the record. And if parties are prevented from submitting
13 that evidence then they are effectively being precluded
14 from participating in the process. We don't believe
15 that's anybody's intention.

16 The second change I'd like to address is the
17 modification to 1710, to permit parties to talk to staff
18 about substantive issues without other parties being
19 present. The grate thing, in our view, about the Energy
20 Commission's process is that all parties get to have input
21 on an issue about which they care before staff makes up
22 its mind on that issue.

23 It's much harder to change somebody's mind once
24 they've already taken a position than it is to help
25 formulate their opinion as they're deciding it. This

1 proposal would change that level playing field and allow
2 parties to try influence staff before anybody else has the
3 chance to voice their opinion.

4 What this means in the reality is that many more
5 disputed issues are likely to get to the hearing stage
6 rather than being resolved informally between the parties
7 at workshops and at similar open discussions.

8 The last point I'd like to addresses is the
9 change to 1752(1), which would delete the requirement that
10 the PMPD determine a facility's compliance with local and
11 regional LORS. The point has already been made that
12 change would require a legislative change, and we agree
13 with that. We're also not convinced that this change is
14 necessary given the Commission's authority to override
15 local and regional LORS once it makes certain findings
16 about public convenience and necessity.

17 CHAIRPERSON KEESE: Thank you.

18 MS. POOLE: Thank you.

19 CHAIRPERSON KEESE: Mr. Chaddock.

20 MR. CHADDOCK: My name is Chris Chaddock. And
21 you did clarify some of my concerns. I thought that this
22 was up for possible adoption.

23 CHAIRPERSON KEESE: It perhaps was, but it's not.

24 (Laughter.)

25 MR. CHADDOCK: That relieves a lot of great

1 concern that I did have. So I'll try to make mine as more
2 of a comment in your decision and your possible
3 recommendation.

4 CHAIRPERSON KEESE: Thank you. That's why we're
5 welcoming this. Recognizing you're going to get another
6 crack at this in a public forum.

7 MR. CHADDOCK: Thank you. I understand that
8 there's a perceived need for cheap power by possibly
9 causing great harm to Californians by the adoption of
10 these revisions. And I view that that could happen by not
11 having the ability to participate on an equal level by
12 overriding some of the concerns of a great number of
13 Californians.

14 And it's in my opinion that it would not be the
15 best interests to lessen their rights to participation
16 when, I feel that it is the CEC that the public comes to
17 for their protection, so that by lessening their ability
18 to participate, an organization that is there to protect
19 the people of California that I feel that your
20 organization is here to do and to oversight from these
21 power producers.

22 And I feel that it would be in the best interests
23 of the greater Californians to regulate the small number
24 of power producers instead of regulating what could be
25 taken by the public as the participants in these matters.

1 I realize that it's not directly your power to regulate
2 the power companies, but their ability to -- your
3 influence on other agencies to maybe regulate the prices
4 of what they sell their electric for, which would lessen
5 the need for future power plants and open up the
6 marketplace for the release of their power to the greater
7 Californians without putting more restraints on them
8 already.

9 Thank you for the time.

10 CHAIRPERSON KEESE: Thank you.

11 Mr. McKinsey.

12 Mr. McKinsey.

13 MR. McKINSEY: Thank you Chairman Keese and
14 Commissioners. I also am --

15 CHAIRPERSON KEESE: For the record, identify
16 yourself.

17 MR. McKINSEY: My name is John McKinsey. I'm
18 here on behalf of NRG Energy Incorporated. And also my
19 comments -- I'm speaking more global just in terms of an
20 applicant's perspective on these proposed changes and on
21 ways to refine the Warren Alquist Act that would work.

22 I, too, generally appreciate the effort that's
23 being made to try to make this process a more effective
24 and functioning one. I've built my reputation and the
25 work that I've been doing in the last several years before

1 Energy Commission on, what I call, essentially trying to
2 bring alternative dispute resolution into this process.

3 And this means I try to negotiate and I try to
4 work out agreements and turn a potential adversary into
5 somebody who supports the project. And when I can
6 accomplish that it's very effective. It allows -- you can
7 do something in a week that would normally take months in
8 this process.

9 And so any changes we made to the process that
10 made that a more feasible and have a higher potential of
11 using alternative dispute resolution methods, I think is
12 very effective.

13 So with that theme in mind and understanding that
14 there a lot of things that have to be accomplished before
15 we could make these changes or any other changes, I wanted
16 to make a couple of comments about the specific proposals
17 in here and my perceptions of those and how they would be
18 either effective or ineffective.

19 The idea of deleting local LORS is on the one
20 side may seem very attractive, but the mentality of every
21 client that I have if they've never done business in
22 California, the first thing they say is well, isn't this a
23 one-stop shop. You go to the Energy Commission and we're
24 done.

25 And I to have educate them that it both it is and

1 it isn't. It is in the fact that the Energy Commission is
2 going to ensure that all the local LORS are evaluated and
3 considered and make sure that the project is going to and
4 is capable of complying with them, but at the same time
5 they're going to have to turn around and get what is the
6 equivalent of an automatic approval by the local agencies
7 for their permits and their processes.

8 And that both encourages them, but it scares
9 them. They were actually hoping that the Energy
10 Commission would literally be a one-stop shop.

11 COMMISSIONER LAURIE: What do you mean an
12 automatic approval?

13 MR. McKINSEY: Well, as a great example, even
14 though you get an Energy Commission permit, you have to
15 have CBO and you work with the local government and you
16 still have to get the same permits you would have gotten
17 other wise, a building permit --

18 COMMISSIONER LAURIE: Yeah, well, what about
19 discretionary permits in order to find LORS of compliance,
20 generally plans, rezones and those things, those are not
21 automatic approvals.

22 MR. McKINSEY: Right, and this is a great example
23 of what they would actually like. From an applicant's
24 perspective, what they would love to see is a single
25 one-stop shop in which the Energy Commission accomplishes

1 all their needs and then they walk away. And a great
2 example of what can go wrong with that kind of a process
3 is the AES Power Plant case in San Francisco in the
4 nineties, in which the Commission completely proved the
5 power plant in San Francisco that never got built.

6 And it ultimately never got built, because the
7 local regional area basically refused to sign the lease
8 that they had already initialed and indicated to the
9 Energy Commission would be acceptable for the site. And
10 that barrier never was overcome and essentially was never
11 overcome because the Energy Commission at the time has
12 left the deferral to the local government.

13 COMMISSIONER PERNELL: Isn't that a great example
14 of you need site control?

15 MR. MCKINSEY: Yes, it is actually a great
16 example of site control. And that was the lesson learned
17 from that that the Energy Commission took forward of
18 requiring that. But my point is that the applicants face
19 a certain amount of risk and uncertainty about the local
20 government. And the extent to which this process requires
21 them to actually ensure they comply with local LORS, the
22 more assurance they get from either the banks that are
23 going to fund and authorized the project to be built from
24 their board of directors who ultimately have to approve
25 the final allocation of the hundreds of millions of

1 dollars to build the power plant.

2 And so what they want when they get a permit is a
3 permit that is definitely considered in compliance with
4 all the laws that can prevent them from building the plant
5 the way it's been designed. And so the idea of removing
6 local LORS from the process on one side can seem very
7 attractive because it forces the Energy Commission in
8 every project to have to come to an understanding of a
9 whole new foreign of rules and requirements, but in the
10 long run, it can prove real detractive, because the local
11 governments would have to find a new way to ensure their
12 own issues and concerns with compliance with local LORS.

13 COMMISSIONER LAURIE: Well, would you also
14 propose a regulation that says if one is unable to obtain
15 their local entitlements that they would withdraw their
16 permit, that they would withdraw their application?

17 MR. MCKINSEY: No, that goes to the certainty --

18 COMMISSIONER LAURIE: Yeah, but the point being
19 is it's really -- I understand the desire for certainty.
20 But then if they don't get it, they just come to us and
21 say we want it anyway.

22 Well, do you know how challenging it is to
23 undertake the principle of overriding a local government
24 even though we have the authority to do so? There's a
25 principle. The principle is addressed in law and we

1 understand what the findings are. But we don't undertake
2 those questions easily and lightly. So the Energy
3 Commission is put in a box and put in a corner and we
4 don't like corners and we don't like boxes.

5 MR. McKINSEY: Actually, I would distinguish
6 between needing to do an override as opposed to evaluating
7 a project's ability to comply.

8 There still would be the ability the set up a
9 structure where the Energy Commission verifies compliance
10 with local LORS. One possibility is removing the
11 override. And as part of the Energy Commission process
12 either an applicant has to take a condition that they do
13 get all their local approvals or two that the Commission
14 has to be comfortable with idea that they're going to
15 be -- it is a very difficult part of this process.

16 And my main point, as I just -- is that from an
17 applicant's perspective, occasionally you'll see some that
18 say we don't have problem. We're willing to move ahead
19 with the risk that we won't get them. But most of them
20 actually want certainty from the permit.

21 CHAIRPERSON KEESE: Mr. McKinsey, I'm going to
22 suggest that we perhaps are getting into Committee work
23 here that --

24 MR. McKINSEY: Is that all right.

25 COMMISSIONER LAURIE: Whatever your desire, Mr.

1 Chairman.

2 CHAIRPERSON KEESE: I think that we're going to
3 ask that -- it's my feeling that Commissioner Moore felt
4 that this should be referred, and that these items should
5 be referred back to the Committee for possible hearing.

6 COMMISSIONER LAURIE: Mr. Chairman, before -- and
7 I heard your comment previously about it could have been
8 adopted under emergency. I had indicated from day one,
9 despite the language on the agenda, that it was my intent
10 to make sure that staff had appropriate opportunity to
11 comment on language as to the public. So it was always
12 my, always my intent to not have this adopted today.

13 But folks are here and with the recognition that
14 there will be further opportunities, maybe they want to
15 limit comments, but I understand that other folks are here
16 today.

17 CHAIRPERSON KEESE: Okay, thank you.

18 MR. McKINSEY: I'd just like to make one other
19 comment.

20 COMMISSIONER PERNELL: Mr. Chairman, if you have
21 a couple of more points, without getting into a long
22 dialogue, I'd like to hear them.

23 MR. McKINSEY: I completely wholeheartedly
24 support the idea of relaxing meeting rooms. And as a very
25 simple great example up to the time that I file an

1 application, I'm able to come to the staff and I'm able to
2 engage in frank discussions about what they perceive the
3 requirements are and what they need to accomplish.

4 I'm also able to do that with Fish and Game, Fish
5 and Wildlife Service, all agencies. The day that the
6 application is filed suddenly my liability to communicate
7 with and work with the staff has a restraint on it that I
8 have to be very careful with, and, frankly, often reduces
9 the ability to work cooperatively and in an alternative
10 dispute resolution mode.

11 And yet at the same time, I can still go to the
12 Fish and Wildlife Service, every agency and have very
13 frank discussions, meet with biologists, meet with site
14 inspectors, so I wholeheartedly support any relaxation we
15 can do of meeting rooms.

16 And then finally I think cross examination is
17 something that if I was to relax it, the way to do it
18 would be to reduce the way in which it is an automatic
19 event that occurs in hearings. Sometimes cross
20 examination is -- one, it has a fundamental right issue,
21 but beyond that it also is sometimes the only means for
22 someone to get the questions answered that they want from
23 somebody.

24 But often it becomes something that is thrown out
25 all the time and I think that assessment was correct that

1 it can hide the truth and not really help very much at
2 all.

3 COMMISSIONER LAURIE: Thank you, sir.

4 CHAIRPERSON KEESE: Thank you.

5 Mr. Williams.

6 MR. WILLIAMS: Thank you, Commissioners. I'm
7 Robert Williams. I have 35 years experience in the
8 electric power business, 20 with Epri and 10 with G.E.
9 I'm here on my own behalf speaking as a public-spirited
10 citizen.

11 First, let me endorse the idea that the need for
12 power is a very important issue. And I wholeheartedly
13 subscribe to that. But I think we, at the same time, have
14 to recognize that processes like this are intended to
15 prevent a small minority from being overrun by the tyranny
16 of the majority. So we can't go too far in simplifying or
17 short-circuiting our process.

18 In the interests of brevity, let me say that I
19 endorse the comments of Kate Poole of CURE regarding the
20 mandatory cross. I see no alternative but to let people
21 cross examine, and I think the Siting Committees are using
22 appropriate discretion in shortening and limiting the
23 amount of time for cross. But to be able to totally
24 preclude that, I think would have a negative effect of
25 precluding some intervenor from injecting a substantive

1 point.

2 Now, with respect to nonpublic meetings within
3 party, I think that goes on, to some extent, I'm not
4 saying the staff is violating rules, but I would suggest
5 that instead there just be a one-page summary of such
6 meetings noticed into the docket of the process.

7 I think there needs to be some record of it and
8 just an outline of the points that are discussed. I think
9 there are plenty of ways for applicants to have
10 discussions with the staff on generic issues or with
11 respect to another matter, so I think it happens all the
12 time.

13 Now, with respect to ambiguity in the evidentiary
14 record, I support your recommendation and would like to
15 see those comments included.

16 With respect to your fourth point on the local
17 ordinances and regulations, here I would like to encourage
18 you to have the siting committee look at this whole issue
19 power plant siting more broadly. Right now, I think there
20 is a loophole big enough to drive a diesel generator
21 through in the small plant exclusion.

22 People can site as many small plants as they want
23 without your participation. And apparently, they can even
24 put auxiliary diesel generators on the same site.

25 COMMISSIONER LAURIE: Not necessary. You may

1 want to stick round for a half an hour.

2 (Laughter.)

3 MR. WILLIAMS: Yes. I'm planning to. I'm amused
4 by that.

5 But very briefly, I think the CEC would do the
6 State of California a great service if they would begin a
7 statewide siting process working with local government
8 authorities to establish a siting bank. I don't think
9 that needs to be too onerous, and I think it would work
10 well, you know, given that we have these other escape
11 hatches for the emergency process.

12 COMMISSIONER LAURIE: That is, in fact, being
13 propose by current legislation, Mr. Williams.

14 MR. WILLIAMS: I am pleased to hear that and
15 support that legislation.

16 Secondly, though, I would like to encourage the
17 Commission to develop its own independent expertise on
18 transmission and fuel supply issues. I foresee a major
19 problem -- with PG&E and with Southern Cal Edison being
20 nearly bankrupt, I foresee a shortage in the plan
21 generation or transmission expansion in the next couple of
22 years, and so I see constant embarrassment to the
23 Commission when a plant put in suddenly does not have the
24 transmission upgrades or the fuel supply infrastructure
25 that was anticipated.

1 So I think that because of the illconceived
2 approach to energy deregulation, I think many of the
3 problems that we are facing are an artifact of that. I
4 think there will be a need for new legislation to give
5 someone the authority for a statewide look at power plant
6 siting.

7 I would encourage that be the Energy Commission
8 for want of a different person, unless there was a
9 California State Power Authority set up. That idea I
10 would support. But to reiterate, I would urge that you
11 consider some of these broader initiatives, that is a
12 siting bank and a preferential treatment for a standard
13 plant, that is a plant that has already been approved and
14 sited at some other location in California.

15 I think these things would be far more helpful in
16 speeding up the process than trying to cut down the public
17 comment. I also believe the process of establishing a
18 siting bank that is not on the critical path then of any
19 particular project. In principle, if you could get this
20 process up to speed, people could come in and essentially
21 find the local ordinances and regulations are covered, and
22 that the city is welcoming a power facility.

23 So I thank you.

24 CHAIRPERSON KEESE: Thank you, Mr. Williams.

25 Do we have any other public comment?

1 PUBLIC ADVISER MENDONCA: Roberta Mendonca the
2 Public adviser. The Public Adviser received four
3 additional comments from the public. The first one came
4 in from Alan Ramos from the Southeast Alliance,
5 Environmental Justice, Our Children's Earth and
6 Communities For a Better Environment.

7 They were six pages of comments, and I have
8 reproduced those and provided them to the Commissioners
9 and there are copies of those comments available for
10 anybody that would like to pick them up. Essentially,
11 they are -- would state that, "The regulations fail to
12 accomplish what are apparently their drafter's goals are
13 grounded in an inappropriate policy consideration and are
14 inconsistent with State and federal statutes and basic
15 fundamental and constitutional rights.

16 "For these reasons, described in more detail in
17 the following text, these intervenors recommend the
18 Commission reject these proposals."

19 That statement was supported by Californians For
20 Reliable Energy.

21 Additionally, comments came in from the City of
22 Morgan Hill, and they have expressed concerns with the
23 proposals. Comments came in from the City of San Jose and
24 they have expressed rather detailed concerns with the
25 proposals. And, again, those comments are available.

1 CHAIRPERSON KEESE: Thank you. And I think that
2 we don't need to delve any further, since this is not
3 going to be acted upon today.

4 COMMISSIONER LAURIE: Mr. Chairman, question of
5 Mr. Tooker. Chris, don't we already have an existing OII
6 on the regs?

7 MR. TOOKER: Yes, we do sir, it's the siting
8 improvement process that we could use.

9 COMMISSIONER LAURIE: Well, my proposal, Mr.
10 Chairman, would be to ask my colleague on the Committee,
11 Commissioner Pernell, to meet with myself to determine
12 further direction. And my request will be to ask staff to
13 look at specific language and then have that specific
14 language, the subject of an OII workshop and then brought
15 back to this commission for action.

16 I would note, however, on the question of the
17 issue of cutting down on public comment, local agencies
18 hear projects every day that have far greater
19 environmental impact on the populous than these projects
20 do. And I have never engaged in a process in front of a
21 local agency that is as formalized and restrictive as
22 this. And yet the courts, public policy have never
23 indicated disfavor with that process.

24 And what I find good about the process is the
25 people can stand up and say what they want to say and the

1 points are well made. Now, to the extent that this is a
2 State and not the local government, and therefore to a
3 degree separated from the populous, and especially in
4 light of the fact that we are not elected by the populous,
5 I think there is cause for additional sensitivity and
6 concern by the public. And I have no problem with
7 ensuring that there are no secret meetings that anything
8 discussed is made available to all individuals.

9 I just have a real difficult time with finding
10 that the formality of our process is essential to serve a
11 public purpose, and I will continue to argue that, Mr.
12 Chairman.

13 My proposal is to move that this matter be
14 referred back to the Siting Committee and then brought
15 back by the Commission and it be my desire and intent that
16 that be accomplished within 30 days.

17 CHAIRPERSON KEESE: Thank you.

18 COMMISSIONER PERNELL: Is that --

19 CHAIRPERSON KEESE: Mr. Chamberlain, are you --

20 CHIEF COUNSEL CHAMBERLAIN: I just had a
21 question, a clarifying question. Are you proposing to
22 bring it back with a proposed Notice of Proposed Action
23 for a rule-making or would you be bringing it back as an
24 emergency rule-making at that time?

25 COMMISSIONER LAURIE: Well, we already have a

1 rule-making, so we don't need Commission action to adopt a
2 new rule-making. It will be brought in under the current
3 rule-making.

4 So what procedures do you have to go through to
5 not have it be an emergency modification claim?

6 CHIEF COUNSEL CHAMBERLAIN: In essence, we would
7 have to draft expressed terms. We would have to draft a
8 Notice of Proposed Action and an initial statement of
9 reasons for those changes to the regulations. And then we
10 would file those with the Office of Administrative Law.
11 They would publish them and then there would be a 45-day
12 comment period.

13 COMMISSIONER LAURIE: It is my intent to bring it
14 back as an emergency, and It will be my responsibility to
15 provide proper rationale for that. If OAL doesn't like
16 it, they can tell us to start over.

17 CHAIRPERSON KEESE: Okay. And you're going to
18 have your workshop within the 30-day period?

19 COMMISSIONER LAURIE: I would hope so. It
20 depends on Commissioner Pernell and staff's schedule.

21 COMMISSIONER PERNELL: Mr. Chairman.

22 CHAIRPERSON KEESE: Commissioner Pernell.

23 COMMISSIONER PERNELL: I would just note that we
24 are embarking upon a. -- the siting of peakers. And we
25 are expediting the siting projects. I agree with

1 Commissioner Laurie that we need to take a look at this.
2 However, I wouldn't want to put a time line that would
3 conflict with what we're trying to do for June 1 or July
4 or whenever we can get these plants up and running. So I
5 would just comment that we need to have consideration on
6 that.

7 CHAIRPERSON KEESE: I will take Commissioner
8 Laurie's statement is he's doing to do his darndest to try
9 to make 30-day deadline.

10 COMMISSIONER LAURIE: Well, wait. Mr. Chairman,
11 I think this is important. I agree that we are really
12 busy. The Commissioners are really busy. And staff is
13 working at 110 percent. But, you know, over the last
14 couple of years we've had numerous workshops on these
15 issues, and they always seem to take of lesser priority.

16 Well, what we're going to find is they're not
17 going to take lesser priority with the Legislature. And I
18 would rather have us contemplate and us think and us
19 determine our preferred process rather than having an
20 external force determine what our best process should be.
21 I thus consider it an appropriate priority.

22 COMMISSIONER PERNELL: Mr. Chairman, I certainly
23 agree with that. I think we should set the course for the
24 destiny of the Commission. However, what our thoughts are
25 in this matter doesn't affect the Legislature in any way,

1 as you have heard on some of the assembly floor debates.

2 My concern is this, we can have this -- we can
3 modify, come back, and I think it would be certainly a
4 good process. I've even learned something here today.
5 But that doesn't, nor will it, prevent any legislator over
6 there from putting in legislation and moving that forward.
7 Whether the Governor signs it or not is a different thing.
8 And if he does, then we've got to throw all of that out
9 and start all over again.

10 So all I'm saying is that I think we should be
11 sensitive to the workload and our schedule, and we also
12 should bring in to the discussion, since I see Tim back
13 there with all of the proposed -- everyone in the
14 Legislature and including this commission has ideas on
15 what we should be doing with our siting process. And we
16 should look at all of those and not get conflict out.

17 What I am cautious of is we go through this
18 process, legislator submits legislation, gets it through
19 all of the committees and it gets signed and it throws out
20 the process and they bring in something else.

21 I would like to know if we do down this road that
22 it's going to be one in which, at the end of the day, is
23 going to make a difference, and that's my only concern.
24 So I agree that we should have the workshop. I'll even
25 agree that it should be emergency legislation, emergency

1 regulation, but there is a number of factors that we need
2 to consider. And one of them, a primary one for me, is to
3 ensure that there is adequate generation or ensure that
4 the Commission is stepping up and doing its per the
5 Governor's plan that he's laid out in terms of the
6 megawatts that we need to have up and running. And that's
7 the only concern I have with the proposal, Mr. Chairman.

8 CHAIRPERSON KEESE: Commissioner Pernell was that
9 a second to the motion to approve it?

10 (Laughter.)

11 COMMISSIONER PERNELL: Yes.

12 COMMISSIONER PERNELL: It is a second to send it
13 back to committee, but there needs to be other discussions
14 about this.

15 CHAIRPERSON KEESE: I'm sure there are going to
16 be.

17 Staff.

18 MR. TOOKER: Yes. I just wanted to make two
19 points. One is, I believe that on at least three of these
20 topics that we already have sufficient information
21 developed in our work on the siting process and
22 improvements that would feed into these kinds of
23 recommendations.

24 And secondly, we are in consultation with
25 proponents of legislation that have raised these kinds of

1 issues and would be very, I think, supportive of our
2 moving forward to try to exercise -- or the Commission to
3 exercise its own judgment to implement these changes.

4 So I think it can be constructive. To the extent
5 that we've addressed some of the issues already, in the
6 existing process, we're ahead of the game, while
7 recognizing, of course, that we do have a work load to
8 deal with, but I think that this initiative will address
9 or lot of needs out there both legislative needs as well
10 as our own needs for our programs.

11 CHAIRPERSON KEESE: Thank you. And I do believe
12 we were informed by the public comment today also which
13 was very helpful to me.

14 All in favor?

15 (Ayes.)

16 CHAIRPERSON KEESE: Opposed?
17 Referred to the Committee.

18 COMMISSIONER LAURIE: Thank you, Mr. Chairman.

19 CHAIRPERSON KEESE: Thank you. We will then take
20 up, seeing the hour of the day, and the fact that
21 Commissioner Rosenfeld will be appearing before the Rules
22 Committee for confirmation at 1:30, we're going to go
23 directly through and hopefully expeditiously.

24 Item 12, Industrial Energy Efficiency Program.
25 Possible approval of a grants to Douglas Energy Company

1 not to exceed \$490,001.

2 COMMISSIONER LAURIE: I move the recommendation.

3 CHAIRPERSON KEESE: We have a motion.

4 Do we have a second?

5 COMMISSIONER ROSENFELD: Second.

6 CHAIRPERSON KEESE: Motion and second,
7 Commissioner Laurie and Commissioner Rosenfeld.

8 Any public comment?

9 All in favor?

10 (Ayes.)

11 CHAIRPERSON KEESE: Opposed?

12 Adopted four to nothing.

13 CHAIRPERSON KEESE: Wonderful.

14 Item 13, AB 970 Demand Responsiveness Program.
15 Possible Approval of -- I was just going to say of grants
16 to install hardware, two-way communication devices and
17 demand responsiveness software. We are taking this up
18 also -- we will also take up, at this time, Item 25 for a
19 similar grant for Hewlart-Packard Company, Palo Alto site
20 for \$445,000.

21 We are taking up today items A, B, C, F, G and H.
22 Items D, E and I have been withdrawn. We are also taking
23 up the Hewlett-Packard. That will change the numbers in
24 here, so if you would like to give us numbers as we
25 proceed, that would be fine.

1 COMMISSIONER PERNELL: Mr. Chairman, if I may.

2 And I think have the numbers here, but we'll see.

3 Mr. Chairman, this came before the efficiency
4 Committee and what you have before you, as you have
5 indicated, is seven grants to do some hardware, two-way
6 communication demand responsive hardware that will provide
7 approximately 16 megawatts of peak electricity demand
8 savings. But I want caveat that if given the resources,
9 we can make this happen.

10 As you also have indicated, items -- is it items
11 A? Here it is. The Foothill, which is item A and the
12 Hewlett-Packard which is item --

13 MS. DUFFY: It's item J.

14 COMMISSIONER PERNELL: Item J, which is a new
15 item, will be funded today and the others when the
16 necessary resources present themselves, hopefully out of
17 SB 5X. And with that, I will have additional comments
18 from --

19 MS. DUFFY: Beverly Duffy from the Efficiency
20 Division. And these are for HVAC and lighting demand
21 responsive. And the first ones that arrived -- it's a
22 first come first served basis Hewlett-Packard was the
23 first in line. Although for purposes of this, they were a
24 little late getting some additional information, which is
25 when they were added later. And Foothill College District

1 De Anza came in next in line as far as their arrival.

2 So, currently, we have enough funding to cover
3 both of those grants. The additional ones with the
4 exceptions of the ones that the Chairman has indicated are
5 withdrawn are to be funded at further date.

6 COMMISSIONER PERNELL: Yes, okay.

7 COMMISSIONER LAURIE: Do you want to make a
8 motion Commissioner Pernell and can you seek to clarify
9 what's on the agenda and what's being added to it as part
10 of the motion.

11 COMMISSIONER PERNELL: Yes. Mr. Chairman, I
12 would move that the Committee approve Item 13. In
13 addition, that Hewlett-Packard and Foothill be funded
14 immediately and the other items be funded if there are
15 necessary resources available.

16 COMMISSIONER ROSENFELD: Second.

17 COMMISSIONER LAURIE: Thank you. Moved and
18 seconded to adopt the recommendation with additions.

19 Public comment on the motion?

20 I'll put the question. All if favor, please say
21 aye?

22 (Ayes.)

23 COMMISSIONER LAURIE: Opposed.

24 Motion passes three to nothing.

25 Thank you.

1 MS. DUFFY: Thank you.

2 COMMISSIONER PERNELL: Thank you Ms. Duffy. I
3 apologize for not remembering your name.

4 COMMISSIONER LAURIE: I wonder if the Chairman
5 plans to come back for Item 14.

6 Well, we want him here for that. How long do you
7 expect Item 15 to take, Commissioner Pernell?

8 COMMISSIONER PERNELL: Item 15 shouldn't take too
9 long.

10 COMMISSIONER LAURIE: Let's go ahead and do that.

11 AB 970, Building Energy Efficiency Standards.

12 Commissioner Pernell, did you want to offer
13 opening comment or did you want --

14 COMMISSIONER PERNELL: Mr. Chairman, just in the
15 matter of opening comment this is discussion only and
16 we'll have Mr. Pennington kind of bring us up to date.
17 And I would urge that we be as expeditious as possible on
18 the discussion item.

19 Mr. Pennington.

20 MR. PENNINGTON: Thank you. The Commission
21 adopted the AB 970 emergency standards on January the 3rd,
22 and immediately after that the staff and committee started
23 the process to adopt those standards as permanent. Given
24 that the Administrative Procedures Act waived certain
25 requirements for emergency adoption of regulations, the

1 agency is obligated to go back and adopt them as permanent
2 in a full formal rule making.

3 So we have been pursuing that. The Committee
4 conducted a hearing on February 5th and heard comment on a
5 number of items. As a result of that, we are intending to
6 have 15-day language at least on two items. Actually, two
7 items that the full commission heard some comment on on
8 January the 3rd when they adopted the emergency standards,
9 and that related to demand ventilation control,
10 clarification and also a clarification related to radiant
11 barriers and enclosed rafter spaces.

12 We may also propose 15-day language related to
13 thermal static expansion valves. And it's possible that
14 there might be some proposal related to fuel verification
15 procedures.

16 Today was the date in the formal document that
17 starts the rule-making proceeding that was noticed as the
18 adoption date. That's only possible if we make no changes
19 to the standards. And since we are proposing to make
20 changes, then there's no adoption today that's
21 recommended. We're proposing to put out 15-day language
22 no later than March the 16th. And the adoption of those
23 would come back to the Commission on April the 4th.

24 I wasn't planning to get into the substance of
25 anything, but if you have questions, I'd be glad to

1 respond. I think there are people from the public to
2 comment.

3 CHAIRPERSON KEESE: Yes, we have at least three
4 members of the public who would like to speak to this, so
5 I think this is the appropriate time for that.

6 MR. HODGES: Yes. My name is John Hodges. I'm
7 the general counsel for the Air-conditioning and
8 Refrigeration Institute. I'd like to address one matter
9 that the Mr. Pennington has raised. And that concerns the
10 TXV's or the Thermostatic Expansion Valves that are
11 covered in Title 24 of the Building Code.

12 A thermostatic expansion valved is a
13 refrigerant --

14 CHAIRPERSON KEESE: Can you get just a little
15 closer to that microphone.

16 MR. HODGES: Yes. A TXV is a refrigerant
17 metering device in an air-conditioner. In our view in
18 ARI's view the provisions in Title 24 are indeed preempted
19 by the Energy Policy and Conservation Act of the United
20 States.

21 Basically, it is because the TXV related rules
22 quote, "concern the energy efficiency or energy use of a
23 covered product," and those are the central
24 air-conditioners.

25 Under Title 20, the Commission already agrees

1 that TXV related provisions, which are slightly different,
2 but we feel without a. -- essentially without a
3 difference, that the Title 21s are preemptive. And the
4 Commission is considering the potential of going to the US
5 Department of Energy to obtain a waiver.

6 In our view, we feel the same situation applies
7 here that we feel that Title 24 runs our preemptive -- or
8 the reasons that we set forth in our written statement.

9 In addition, you will have comments from others
10 as well, such as Lennox, which I believe have been
11 provided to the Commission. Mr. Mullin would have been
12 here today but his wife is ill. Basically, Lennox's
13 position, as well as ours, is that the TXVs will not
14 provide the level of results that the Commission believes
15 that it would.

16 In our view, why do we care about this? We care
17 about preemption. We also care about the impact on our
18 systems would be involved if one goes around monkeying
19 with the system by requiring certain things be added.

20 So we are very happy that you are considering
21 changes. We'd like to work with the Commission staff on
22 this so that the matter will be resolved in a prompt and
23 timely fashion. In our view, we think that these
24 provisions should be dropped. If you decide to go ahead
25 with it, in any event, we hope that you will go to the US

1 Department of Energy to obtain a waiver of preemption.

2 And our only other view is that we are in a box,
3 we don't like to be in a box either. We facing a June 1
4 situation where the emergency rules are intended to go
5 into effect at that time. So, again, we would
6 respectfully state that we're sort of stuck. We're up
7 against it, and we hope that we can work together with the
8 Commission to reach a reasonable resolution of the matter.

9 Thank you very much.

10 CHAIRPERSON KEESE: Thank you.

11 Mr. Fernstrom.

12 MR. FERNSTROM: Thank you. I'm Gary Fernstrom
13 with the Pacific, Gas & Electric Company. PG&E is opposed
14 to substitution of field verification for a Thermostatic
15 Expansion Valve requirement.

16 This technology has been studied for more than a
17 decade. There is ample evidence to indicate that
18 thermostatic expansion valves are effective and do reduce
19 peak demand over the range of air flow and charged
20 circumstances that our studies and your studies have found
21 in the field.

22 It's difficult to do field verification with
23 air-conditioning, because air flow measurements are
24 difficult. And in order to properly measure the charge,
25 you have to evacuate the system, weigh the charge and then

1 reinstall it, it's not a simple matter or as simple a
2 matter as it may be to deal with duct leakage in the
3 field. It's more complicated. It's more expensive. It's
4 more subject to variation.

5 So we believe that if the Commission wants to see
6 the demand reduction that is available through the TXV
7 technology and is truly concerned about the electric
8 crisis facing us this summer, it will proceed down the
9 path of requiring TXVs as a residential measure through
10 Title 24.

11 This is the only way that we can get the demand
12 reduction that is available through this technology.

13 Thank you.

14 CHAIRPERSON KEESE: Thank you.

15 Mr. Chapman.

16 MR. CHAPMAN: Mr. Chairman, I would defer my
17 comments for the sake of time. I was even trying to save
18 more time.

19 CHAIRPERSON KEESE: Well, you can defer -- we're
20 really happy to have you defer, but you've got to do it in
21 the microphone.

22 MR. CHAPMAN: I assumed you would be, and I was
23 just hoping to the save a few seconds. I would defer my
24 comments that I noted on the card, unless those are raised
25 and supported. I would defer my comments and thank for

1 your Commission's work.

2 CHAIRPERSON KEESE: Thank you. We appreciate
3 that.

4 Any other comments?

5 Seeing none, this --

6 MR. HODGES: I'm sorry. This is John Hodges. I
7 just don't want to be misunderstood, we have nothing
8 against voluntary use of terminal TXV's. The issue here
9 is a matter of regulation requirement.

10 Thank you.

11 CHAIRPERSON KEESE: Thank you. This was a
12 discussion only item, and we've had the process well laid
13 out for us. And it is in our agenda package. This will
14 be rescheduled for our April 4th business meeting after
15 appropriate publication.

16 COMMISSIONER PERNELL: Mr. Chairman, just as a
17 matter of information, this is going to come back to the
18 Committee. We would be looking at these issues and
19 everybody's data one more time, so I would advise you to
20 get it in and have it in a form that we can substantiate.

21 CHAIRPERSON KEESE: Thank you. And so I am
22 informed that we are now ready take up Item 14.

23 CHIEF COUNSEL CHAMBERLAIN: Yes, Mr. Chairman.

24 CHAIRPERSON KEESE: US Dataport Jurisdictional
25 Determination. Public hearing on a request for

1 determination that the Energy Commission does not have
2 power facility licensing jurisdiction over a planned
3 development.

4 CHIEF COUNSEL CHAMBERLAIN: Yes, Mr. Chairman. I
5 provided you three documents. The first is a proposed
6 decision that I circulated on January 24th. The second is
7 a proposed settlement agreement between US Dataport and
8 the Energy Commission. And the third is an action plan
9 add I'd like to explain those documents to you.

10 As you are aware, US Dataport came to us, they
11 have an intention to construct an Internet campus which
12 would use a significant amount of power in the city of San
13 Jose.

14 Their original design was to have a cogeneration
15 facility of just under 50 megawatts close by and to rely
16 upon the grid with the possibility of their tenants
17 installing diesel fired backup generators for the
18 possibility that the grid would go down.

19 They asked us to determine that the Commission
20 has no jurisdiction over that kind of a development. And
21 both the staff and I concluded that, in fact, the
22 Commission probably does have jurisdiction. This matter
23 was to come to you.

24 Now, of course, we recognized right from the
25 start that this really didn't have to do with whether we

1 liked the US Dataport project or not. It appears to be a
2 good development. And the big problem that they have was
3 that if the Commission determined that it had jurisdiction
4 under the circumstances that we were looking at up until
5 February 8th, that could result in a delay of more than a
6 year while their power developer came in and revised their
7 power project and it would take a long time for this
8 Commission to license it.

9 So on February 8th, of course, the Governor of
10 the State of California issued a series of executive
11 orders that allowed the Commission significantly more
12 flexibility to license these kinds of facilities. And we
13 began discussions of this settlement agreement, which were
14 designed to basically put aside the jurisdictional
15 question. They didn't really dispute whether we should
16 have jurisdiction, if they could, in fact, get the power
17 plant that they really wanted from the beginning, which
18 was a larger, approximately, 250 megawatt combined cycled
19 cogeneration plant that would serve all their needs in a
20 redundant fashion.

21 If they could get that, then reading the
22 jurisdictional determination becomes irrelevant. And
23 because we believed that under the executive orders we
24 could provide that kind of licensing in a relatively short
25 period of time, we began discussions with Calpine, who is

1 their power developer. And we have, as you will note from
2 the action plan that I gave you, we have developed a plan
3 that Calpine believes could actually result -- there
4 actually needs to be a slight modification to the action
5 plan before you, because this action plan shows a simple
6 cycle power plant coming on line on November 1st.

7 And as we understand it, because of the
8 anticipation that the shorter process that the Commission
9 has maybe extended to facilities that could come on line
10 as late as November 30th, we may actually be able to get
11 some of this power on line this summer. So in addition to
12 resolving the US Dataport jurisdictional dispute without
13 having to take action that would damage their ability to
14 get the financing that they need to proceed with the
15 project, we have an opportunity here, potentially, to get
16 an additional, approximately, 160 megawatts on line
17 earlier than was on anybody's radar screen before we began
18 these discussions.

19 Now, I should indicate that the key event that
20 has to take place in order for all this to happen is for
21 the City to agree to modify its position to date, which
22 was that the lease -- the City owns the site on which the
23 power facilities are to go. And they, up till now, have
24 been indicating that they would require that those
25 facilities be less than 50 megawatts and that's why the

1 original design had the power facility that way.

2 There have been discussions with the City. There
3 is a considerable hope on the part of the applicant and on
4 the part of our staff that those discussions will go well,
5 that the City will recognize that this is better for both
6 the City and the applicant and will approve that lease as
7 you see here approximately in the middle of April, that
8 they would be anticipated to do that.

9 I think at this point, I should probably let the
10 applicant's counsel speak to you on the issue of -- well,
11 on any issue that perhaps I haven't covered well enough
12 and also particularly on the issue of why it's important
13 to them that the Commission enter into the settlement
14 agreement today.

15 You should recognize that the settlement
16 agreement, as it's been drafted, basically says that if
17 this action plan doesn't work, the Energy Commission will
18 still not assert the jurisdiction that it may or may not
19 have. You wouldn't be determining whether you have
20 jurisdiction. You would simply be indicating in the
21 settlement agreement that you won't assert it if it turns
22 out that the action plan can't be carried out as we all
23 anticipate that it will be.

24 COMMISSIONER LAURIE: Question Mr. Chairman.

25 CHAIRPERSON KEESE: Commissioner Laurie.

1 COMMISSIONER LAURIE: If the project description,
2 as submitted to the City by the applicant, said we're
3 going to put in less than a 15 megawatt power project and
4 was silent as to backup, and their CC&Rs for the project
5 permitted the tenants to provide backup generation at
6 their discretion, then what kind of permitting process
7 would the individual tenants have to go through? Would
8 they just have to go through local building and air
9 district permits in order to put up any kind of backup
10 that they desired, diesel or otherwise?

11 CHIEF COUNSEL CHAMBERLAIN: Well, we're getting
12 into the merits of the jurisdictional determination, which
13 I actually promised the applicant that we would try to
14 avoid today, since they have not had the opportunity to
15 respond to my proposed decision.

16 COMMISSIONER LAURIE: That's fine. I respect
17 that. But I remain confused as to why in the world the
18 issue ever first arose, but I guess I don't need an answer
19 to that question.

20 COMMISSIONER PERNELL: Mr. Chairman.

21 CHAIRPERSON KEESE: Commissioner Pernell.

22 COMMISSIONER PERNELL: My understanding, and I
23 could have heard you wrong or misunderstood you, is that
24 the applicant -- we can't discuss that because they
25 haven't really reviewed the proposal in terms of the

1 modifications to the plant.

2 CHIEF COUNSEL CHAMBERLAIN: No. What I said
3 was -- they've certainly reviewed my proposed decision.
4 They were prepared to speak to that at the Commission's
5 business meeting, well whenever you would have taken that
6 up. As it turned out, they didn't need to do that because
7 we began to start talking about the possibility of a
8 settlement and they never actually responded to the
9 proposed decision. That's really what I meant.

10 COMMISSIONER PERNELL: So the proposed settlement
11 that we're talking about we don't want to talk about it
12 because it's not done.

13 CHIEF COUNSEL CHAMBERLAIN: Well, what is before
14 you today is the possibility of authorizing me to enter
15 into this settlement on your behalf or you could wait
16 another two weeks or whatever time seems appropriate to do
17 that.

18 MR. KARP: If I may. My name is Joe Karp. I'm
19 with White and Case representing US Dataport. We are
20 prepared today to talk about the application and talk
21 about any aspect of the settlement you have questions
22 about. And I do intend to address Commissioner Laurie's
23 question directly as to why we are here today.

24 CHAIRPERSON KEESE: Okay.

25 COMMISSIONER PERNELL: All right. Let's move

1 forward.

2 CHAIRPERSON KEESE: Thank you.

3 COMMISSIONER PERNELL: Maybe you can answer my
4 questions.

5 MR. KARP: Thank you very much. I will try.
6 With your indulgence, I'd like to go back a little bit
7 before I start talking about how we actually got here
8 today and to give you the background on the US Dataport.
9 And our project.

10 US Dataport is a relatively new company that's in
11 the businesses of developing data center complexes. These
12 complexes are essentially campuses of buildings that would
13 leased to individual tenants who have a need for or who
14 install high technology telecommunications equipment and
15 equipment that involves storage of data.

16 And by consolidating these different tenants at a
17 location, a campus, where they're close together, you
18 facilitate the speed with which they can communicate and
19 you avoid the risk of disruptions by communication over
20 long transmission lines. It's a new concept that we think
21 is a very significant development for our economy, the
22 high-tech industry.

23 The market opportunity, in fact, the market need
24 for this kind of project is here today. We have heard
25 about the effects that our energy crisis is having on

1 Silicon Valley. In fact, we attached to our response to
2 the staff's comments a number of articles and clippings
3 that reflect that high tech companies are leaving the
4 State are avoiding the State and they're locating the data
5 centers elsewhere, in part, because of the -- in large
6 part because of the electricity crisis.

7 US Dataport developed the project for north San
8 Jose that we believe addresses these issues. We have been
9 far along in our permitting process with the City of San
10 Jose. There is a full review of the environmental
11 consequences taking place there. And the Energy
12 Commission staff, in fact, has submitted detailed comments
13 and they will be addressed in the course of the CEQA
14 process to be undertaken by the City.

15 Now, in particular regards to Commission Laurie's
16 comment, how did we get here. As part of our CEQA
17 process, we did what we're supposed to do. We kind of
18 look forward and said well, what might happen at our
19 campus. We had planned to install or have installed on
20 adjacent property a 49-megawatt Cogen facility to provide
21 highly reliable electricity And thermal energy to a few of
22 the buildings that will be sited there.

23 We also imagined and there's a pretty good chance
24 this will happen, that tenants at the other buildings will
25 not be satisfied with the reliability power from the grid.

1 Now, these buildings we anticipate will be built out over
2 about five years. So we're looking two or three years out
3 at least for these other buildings. And even then, we
4 imagine they will say, we're not comfortable with just
5 grid power. We anticipate these tenants will install
6 diesel backup generators or whatever backup generator
7 technology is available at the time.

8 And our intention is to make the process of
9 putting in these backup facilities as easily possible for
10 our tenants. And, in fact, we believe that the ability to
11 put in these backup facilities will be a requirement of
12 our project lenders. If there is not a guaranteed level
13 of reliability of electricity and thermal product to this
14 campus, the campus won't succeed as a business venture.

15 So through our CEQA analysis, we said this is
16 very like that our tenants will install these generators.
17 And we believe this is our responsibility to analyze that
18 risk. And in looking at it more closely, well, we're
19 going to have 200 megawatts of generation capacity there,
20 even though 150 may be backup generation, there's an issue
21 whether the Commission has jurisdiction.

22 And rather than wait, rather than duck the issue,
23 we felt we would come forward at the beginning and raise
24 the question. And that's why we're here.

25 Now, just to elaborate a little bit about how

1 we've configured these backups. US Dataport will not
2 install the backup generators. It will be a decision made
3 by each individual tenant as they approach their lease.
4 They would be required to separately apply for a permit.
5 Although, US Dataport as part of it's current CEQA process
6 will get an umbrella authorization that they can have
7 these backup generators.

8 But when each tenant moves in and decides to put
9 in a back up generator, they will be required to go and
10 get a separate permit to operate from the local air
11 district.

12 The tenants will make their own decisions about
13 what technology, when and how to install these facilities
14 and how to operate them. The tenants will own them by
15 themselves. Dataport will not own these facilities. The
16 facilities will be dedicated to the individual buildings.
17 They will not be interconnected. No individual backup
18 facility would be allowed to serve another facility. The
19 backup generators will not serve the grid. They will
20 isolated physically and through our lease agreements to
21 serve only the buildings.

22 And they will be installed on a staggered basis.
23 They will not be installed at one particular time. US
24 Dataport will not own them, operate them in any fashion.
25 We come to the Commission saying this is not a single

1 power plant. These are individual backup generators that
2 will be installed and owned by third parties.

3 Under this configuration, we believe there is no
4 jurisdiction from the Commission over this project. There
5 is no single power plant that would be greater than 50
6 megawatts, and there would be a number of smaller power
7 plants. And liken this situation, our project, to a
8 downtown area, where you have office buildings. Many of
9 these office buildings already have backup generators.

10 And if you look at an area where there are a
11 number of office buildings, you would say well, there's
12 about 50 megawatts or more of backup generators there.
13 But because they were staggered and put in over time and
14 there was no single campus that did a CEQA process, there
15 was no jurisdiction question. We see ourselves very much
16 in the same way.

17 Now, we asked the Commission to make a very fact
18 specific finding in our case. Not to make a general
19 policy pronouncement that the Commission lacks
20 jurisdiction over backup generators or over even a campus
21 with their backup generators. But on the facts of our
22 case, where the generators are isolated to individual
23 buildings and all the facts I mentioned before, there
24 would be no jurisdiction in that case.

25 And that's what we ask in our application. And

1 as Mr. Chamberlain said, we're here because we have a
2 settlement agreement to present to you. We have been
3 working with the City, as I said, for a number of months
4 trying to permit the project, and we believe we're very
5 close. We think we'll be permitted in April.

6 Now, the Energy Commission had submitted comments
7 suggesting that we might pursue a larger facility in lieu
8 of having the potential for a number of diesel backups.
9 And, in fact, that might be a better project for us.

10 We had considered that, and we had rejected that
11 as an alternative to our project, primarily because of
12 restrictions the City had imposed that Mr. Chamberlain
13 mentioned and also because of the timing. We would not be
14 able to get our project up and running and we'd not be
15 able to get financing in time to get our project up and
16 running if we were subject to the risks of a drawn out
17 certification process, but we are willing to consider
18 that. And we are willing to work towards having a large
19 power plant at the project.

20 So when Mr. Chamberlain and the Energy Commission
21 staff approached us, we said yes. We'd be delighted, in
22 fact, to work towards a larger power plant. However, in
23 order for our project to go forward in the timing
24 requirements that we have, we would need to have some
25 assurance that we could tell our financing parties, our

1 lenders that at worst case, there will be a project that
2 we can go forward that will have the configuration that
3 we've designed today, the backup generators and a smaller
4 project.

5 We will work in good faith to develop our larger
6 power plant. We believe we have a developer that's primed
7 to put that in. We believe the City is interested in
8 doing that and they've stated to us that they are
9 interested in having a larger power plant there. We
10 certainly have the incentive to put in a large power
11 plant, both financially and in terms of the environmental
12 benefits of the project.

13 We think we can get a project on line in the
14 summer of 2001. We are very confident we could have one
15 on line by 2002, by the December 2002. And the action
16 plan that we submitted our version of that was circulated
17 to the City and we've gotten concurrence that that action
18 plan makes sense. They have not, of course, signed on the
19 dotted line.

20 The commitment now, and what the settlement
21 agreement provides, is that we will work in good faith to
22 do that larger power plant.

23 And just the last point I want to make at this
24 point, is the settlement agreement would not be
25 precedential. It would be on our facts. And we would --

1 I guess, this is now the last point. That was the second
2 to last point.

3 The last point is in terms of timing. We really
4 do need to have a decision as soon as possible. We came
5 and asked for decision on February 1st. And for various
6 reasons, we are here now, you know, weeks later. And our
7 project schedule, and we don't like to ask you to rush.
8 We know you need to consider things. But our project
9 schedule begins to get more and more delicate as time goes
10 on.

11 So we're hoping to have you approve the
12 settlement or direct Mr. Chamberlain to execute the
13 settlement today so that we can get going on developing
14 our project.

15 CHAIRPERSON KEESE: Let me ask just a couple of
16 questions. These diesel generators, obviously the
17 existence of multiple units of ten diesel generators at
18 two megawatts each is a troubling consequence to people
19 who look at siting major power plants and bringing them
20 down to two and a half parts per million emissions.

21 What is the number that your emissions figure
22 that you're anticipating for these diesel generators?

23 MR. KARP: Let me introduce this is John Mogannam
24 who is the Senior Vice President with US Dataport. He can
25 speak to your technical questions like that.

1 MR. MOGANNAM: We put in an application for a B8
2 with the AQMD with the emission requirements. As far as
3 NOx, we're going to be under 50 tons a year from the
4 entire development at full build out is what we're looking
5 at.

6 CHAIRPERSON KEESE: What would be the parts per
7 million of these individual two megawatt generators?

8 MR. MOGANNAM: I don't have that information with
9 me. It's higher than three ppm.

10 CHAIRPERSON KEESE: Pardon?

11 MR. MOGANNAM: It's higher than the three ppm.

12 COMMISSIONER ROSENFELD: Can you give us some
13 idea, is it ten times higher, 50 times higher?

14 MR. MOGANNAM: It's probably in the neighborhood
15 of ten times higher is my guess.

16 CHAIRPERSON KEESE: So you'd probably be guessing
17 somewhere around 30 parts?

18 MR. MOGANNAM: Probably.

19 CHIEF COUNSEL CHAMBERLAIN: Mr. Chairman, my
20 calculations suggest it's closer to several hundred.

21 CHAIRPERSON KEESE: Well --

22 CHIEF COUNSEL CHAMBERLAIN: Just so you have --

23 CHAIRPERSON KEESE: I appreciate legal staff.
24 Does staff --

25 MR. NAJARIAN: Mr. Chairman, my name is Chuck

1 Najarian, the Compliance Program Manager here at the
2 Commission. When the staff commented on the draft
3 Environmental Impact Report issued by the City of San
4 Jose, air quality staff concluded that the Emissions were
5 approximately 200 times higher than a modern gas fired
6 power plant.

7 CHAIRPERSON KEESE: So you're suggesting that it
8 is 400 parts per million?

9 MR. NAJARIAN: The 200 times higher, and I don't
10 have the specific calculations in front of me, was based
11 on all pollutants, regulated and nonregulated pollutants.

12 MR. MOGANNAM: Now, we need to remember that
13 these generators won't operate continuously as opposed to
14 a plan will operate continuously. And that was --

15 CHAIRPERSON KEESE: I recognize that. This
16 obviously is a point that -- this is a red flag as soon as
17 a proposal like this comes before us. And that leads to
18 great caution, I think, on the part of the Commission,
19 when we strive to put in clean power plants, to see
20 something that has the potential to be, frankly, as dirty
21 as this one can be.

22 Are you doing -- in offering reliability, are you
23 offering anything other than the 49 megawatt generator?
24 Are you talking about flywheel?

25 MR. MOGANNAM: Yes. We will have flywheels at

1 each building for conditioning and for boosting sags and
2 power.

3 CHAIRPERSON KEESE: That will be operated by you?

4 MR. MOGANNAM: No, they will be operated by the
5 individual building owner. That will be part of the
6 individual building owner's responsibility.

7 CHAIRPERSON KEESE: So they will, each individual
8 building owner, will be configuring what they would want
9 for their quality of reliability?

10 MR. MOGANNAM: Exactly. If they need less
11 reliability or they need less boosting power, if you will,
12 from the rotaries, they will use less.

13 CHAIRPERSON KEESE: Do you think there's a
14 possibility they'll be considering fuel cells or
15 microturbines?

16 MR. MOGANNAM: We have actually looked at that
17 possibly. In fact, that was one of the comments that the
18 CEC staff had commented on our EIR and responded to them.
19 And there was a whole slough of issues with few cells
20 related to the technology and the size and the space
21 requirements and the availability in the market with the
22 size that we need that would prohibit us from actually
23 implementing that option.

24 MR. NAJARIAN: I would add that, you know, full
25 build out at the project is a five year process. And as

1 technology develops and improves, we imagine that the
2 tenants will be considering other technologies.

3 CHAIRPERSON KEESE: Let me try to set out. What
4 we're -- what the settlement as Mr. Chamberlain presented
5 to us and I hear, is that we're not sure, we think you
6 might be jurisdictional. You're not sure, but you think
7 you're probably not jurisdictional. The settlement is
8 that you're going to use your best efforts to get a
9 different kind of project approved that would forgo the
10 need for these diesels, but you would still do something
11 to assure that there was a reliability in this project
12 that exceeded what the grid can supply.

13 MR. MOGANNAM: That's correct.

14 CHAIRPERSON KEESE: And in return for your using
15 your best efforts, we should just say that that's the end
16 of our interest in this project. Your offer of best
17 efforts ends our involvement.

18 MR. KARP: Well, you would continue to ensure
19 that we are using our best efforts, but essentially, not
20 withstanding our best efforts, we are unable to develop
21 and license a power plant there, then yes you would be
22 waiving your jurisdiction over -- you'd be waiving any
23 jurisdiction that you might have over the current
24 configuration of the project with the individual diesels
25 or whatever backup generators there are.

1 CHAIRPERSON KEESE: How much of this time do we
2 need to get an assurance that San Jose is going to go
3 along with this? At what point in this process, either
4 one of you, could we feel that the City of San Jose had
5 made a commitment to use their best efforts to approve an
6 alternative?

7 MR. MOGANNAM: In our discussions with the city,
8 of San Jose, they have made that commitment to us. They
9 will try and help us.

10 CHAIRPERSON KEESE: They've made that commitment
11 to you. I'm wondering -- I'd feel a lot better if the
12 commitment was to us.

13 MR. MOGANNAM: I understand your point very well.
14 And, in fact, we've asked Mr. Chamberlain to talk to the
15 City of San Jose's team and he has. And I guess he can
16 characterize the discussions better than I can with them.

17 CHIEF COUNSEL CHAMBERLAIN: Well, yes, I have
18 spoken with the Mayor's Chief of Staff. And he indicated
19 to me that they are very seriously looking at this. He
20 was noncommittal in terms of, you know, that they
21 definitely would approve it or they would go with the site
22 lease that is the essential piece of this thing. But he
23 did say that he thought that those decisions would be made
24 within the next couple of weeks.

25 I notice that the action plan has the site lease

1 approved on April 15th. Certainly, if that were to take
2 place, this action plan would probably go quite smoothly.

3 MR. MOGANNAM: And, in fact, the City has done on
4 ground their planning steps. In our discussions with the
5 Planning Department, they were trying to find ways to
6 adjust the zoning to allow us to put up to a 250 or 300
7 megawatt power plant on that site without a need to go
8 through a rezoning process. They're actually in the
9 process of doing that.

10 So they recognize the need. They recognize the
11 fact that they're willing to work with us. And they're
12 trying to help, in fact, on the ground.

13 CHAIRPERSON KEESE: Commissioner Rosenfeld.

14 COMMISSIONER ROSENFELD: I just want to make an
15 enthusiastic comment. I think that between US Dataport
16 and Bill Chamberlain, we've worked out something which we
17 should rush to do, because it seems to me it's going to be
18 200 times cleaner, more reliable, more sensible and grand.

19 COMMISSIONER PERNELL: What would be the barriers
20 that will prevent you from accomplishing your goal, which
21 I assume is the negotiation with Mr. Chamberlain here on a
22 larger project?

23 MR. KARP: We don't see any particular barriers.
24 We just need to make sure that the City is comfortable
25 with the design of the project with the timing of the

1 project construction. We need to get the permits --
2 Calpine, our developer, would need to develop the permit
3 in a timely fashion. I'm sorry the application in a time
4 fashion and pursue that. There are no other obstacles
5 than what a normal project has to overcome.

6 COMMISSIONER PERNELL: With all due respect to
7 the City, there was a project there two years ago that
8 they were in favor of. So, you know again, I guess this
9 is my concern, that we're giving up jurisdiction of which
10 me for or one are thankful we have. And we're giving that
11 up because you want to work with us to craft an agreement.
12 There's no certainty there, but there is certainty that
13 we're giving up jurisdiction. So there's certainty on one
14 end and a lot of uncertainty on the other end in terms of
15 my personal feelings.

16 So if I could get back to Chairman Keese question
17 I guess, and that is at what point will you know from the
18 City of San Jose that you actually have a larger project?

19 MR. KARP: We appreciate that we're asking the
20 Commission to take a leap of faith with us. We think that
21 it's a relatively small leap in that our project really
22 meets the City of San Jose stated criteria for power
23 development.

24 You know, they have talked about it. They've
25 made public comments about smaller power plants that are

1 located close to load to serve the actual load and that is
2 our project.

3 COMMISSIONER PERNELL: I understand the leap of
4 faith scenario. And perhaps I should ask you to take one
5 with us, which would say something to the effect that if
6 you can't secure the large project with the City, then we
7 can -- I'm trying to see how to put this, that if you
8 can't secure the larger project with the City, then our
9 condition of giving up jurisdiction is over.

10 MR. KARP: There's one problem with that. And
11 the problem is our ability to develop this project on a
12 timely basis and our ability to obtain financing for the
13 project. In order to develop the project, you need,
14 essentially, three things to come together or at least
15 three things, you need the permits, you need the money and
16 you need the tenants.

17 COMMISSIONER PERNELL: I understand that.

18 CHAIRPERSON KEESE: I've got a suggestion here.
19 Let me -- before I make it, let me ask a question, because
20 Mr. Williams in the audience has asked a question. And
21 since he wrote it out, I'll just ask it and if -- his
22 question was how can a plant both serve the grid and be
23 back up at the same time.

24 I'm assuming that what you're talking about now
25 is a 49 megawatt plant that would just serve the

1 buildings?

2 MR. KARP: Yes. It would be dedicated to serve
3 the buildings. Now, there would be some redundancy in the
4 49 megawatt project.

5 CHAIRPERSON KEESE: In the original plan, the
6 different entities would probably put in the ten back-up
7 generators in case there was a failure. If you go to the
8 larger project, I would gather that you're going to both
9 service the buildings and the grid.

10 MR. KARP: We would service -- once the buildings
11 are build out to meet -- so the demand equals the
12 generating capacity, essentially the project would be used
13 to serve the on-site demand and not the grid.

14 However, there will be redundancy in the size.
15 You overbuild the generator. You'll add another turbine
16 on there, so that if there is one turbine down, you have
17 another one that can come in to maintain the reliability.
18 So there would be some additional generation capacity that
19 would actually serve the grid from time to time.

20 It may serve it all the time. It may serve it
21 during peak periods when the prices are right. We can't
22 tell at this time, but there will be some redundancy
23 there.

24 CHAIRPERSON KEESE: But you're not contracting
25 out for it on the spot market.

1 Let me ask, since what we've been asked, I
2 believe by Mr. Chamberlain is to allow the two of you to
3 negotiate a settlement to authorize the parties to enter
4 into a settlement.

5 COMMISSIONER PERNELL: I'm not sure that that's
6 what he's asking.

7 CHAIRPERSON KEESE: Let me suggest if as part of
8 that settlement we ask Mr. Chamberlain to receive, to make
9 sure that he had assurances of the good faith of San Jose
10 to take their best efforts to approve this project, is
11 that to big of a hurdle?

12 MR. MOGANNAM: I think that's doable. I think we
13 can do that.

14 CHAIRPERSON KEESE: Mr. Chamberlain, would you
15 like to describe to us -- for us what you are proposing
16 that we do here.

17 CHIEF COUNSEL CHAMBERLAIN: Well, I was
18 anticipating that you would do one of two things. You
19 would either authorize me to enter into the settlement as
20 it's written before you or you would authorize me to do
21 that contingent upon some event occurring, such as the
22 siting of a lease or some other approval, public approval
23 by the City of San Jose that would indicate that they were
24 going to allow the project to go forward and to
25 reconfigure it.

1 CHAIRPERSON KEESE: I'd like to most substantive
2 act that we could take in the time frames that works.

3 COMMISSIONER LAURIE: Mr. Chairman, perhaps I can
4 cake make an attempt. One, I understand the circumstances
5 that this developer is in and I appreciate the good faith
6 of both the applicant and the applicants representatives.
7 From my understanding, they have proceeded very properly
8 and appropriately in this circumstance, which of course
9 doesn't go to the substance of the issue. But I think
10 everybody recognizes the professionalism in which they
11 have addressed this issue.

12 This issue will not be unique in the future,
13 where a power project -- where the attention paid to the
14 power source of a development project is given special
15 attention, much more so than before and we'll be faced
16 with a circumstance where a project would have had an
17 independent environmental analysis other than that, which
18 we would ordinarily conduct for its power source. And we
19 have yet to address how we're wire going to handle that
20 circumstances.

21 Given that circumstance, I think Mr.
22 Chamberlain's proposal is a proper one, and therefore I'm
23 going to move that Mr. Chamberlain be directed to execute
24 the proposed agreement.

25 The only additional element I would add to my

1 month would be to direct a communication to the City,
2 because I don't think we can get anything from the City
3 regarding a commitment. The Mayor can't commit, the
4 Chairman of the Planning Commission can't legally commit,
5 they just can't do that. And so I don't know how we would
6 accomplish that.

7 I think we can, however, put the City on notice
8 that they now have a responsibility. And I'd like it
9 explained to them what a negative outcome of their
10 decision would be, and that we were using our best efforts
11 to accommodate both the City and the development
12 interests, as well as preserving protection of the public.

13 Therefore, Mr. Chairman, I would move that Mr.
14 Chamberlain's proposal be adopted with appropriate
15 correspondence being sent to the City along the lines that
16 I've discussed.

17 COMMISSIONER ROSENFELD: Second.

18 CHAIRPERSON KEESE: Second by Commission
19 Rosenfeld, motion by Commissioner Laurie.

20 Any further discussion?

21 COMMISSIONER PERNELL: Mr. Chairman, on the
22 question.

23 CHAIRPERSON KEESE: Commissioner Pernell.

24 COMMISSIONER PERNELL: It appears that to me, Mr.
25 Chairman, that we are giving up jurisdiction for a

1 noncommittal letter from the City. And perhaps I got this
2 wrong, but I am seeing in this proposal -- and first of
3 all, let me commend the applicant. I think this is great.
4 I think you took a proactive stand in this. I think that
5 we should be able to work it out, but we're not holding
6 the City's feet to the fire here. We're actually letting
7 them off.

8 They can actually say -- I mean, we can always
9 say that well, you know, it's not a 100 percent agreement
10 by the Commission. And we shouldn't do it, but at some
11 point we've got to be able to step up, the applicant has
12 got to be able to step up. It is a benefit to this State
13 to have a larger project.

14 If we're going to give up jurisdiction only on
15 the fact that we don't think we can get the City to do it,
16 but we hope that they do. Let's write them a letter and
17 embarrass them, you know, put an ad in the paper, all of
18 those things, is not really conducive to our siting
19 process, and our jurisdiction or authority.

20 I have some problems with this. I'm for the
21 additional generation. I'm for working this out. But to
22 say that, you know, we're going to give up jurisdiction
23 because the applicant is really working with us and if
24 there's a condition where they can't make it happen, we
25 just gave up jurisdiction and we have no authority

1 whatsoever, so they can leave, not saying that they will,
2 and I don't think that this will happen, and my
3 reservation is not with the applicant or the owner, I want
4 you to know that. My reservation is more with the
5 policymakers and the local jurisdiction.

6 And they can simply say or take Mr. Chamberlain's
7 letter and say, you know, you can't -- we can't agree to
8 that. Then it's over. We don't have jurisdiction, the
9 city has said no, and you're moving forward with your
10 project.

11 So I have some major concerns with this just from
12 a policy level. I think that we need to rethink some
13 negotiations here so that we can make this project work.
14 I want it to work. I mean, I would love to see some
15 additional generation in the City of San Jose, but I'm
16 not prepared to give up the Commission's jurisdiction on
17 an uncertainty of that magnitude.

18 So Mr. Chairman those are my comments.

19 CHAIRPERSON KEESE: Put you down as questionable.

20 (Laughter.)

21 COMMISSIONER PERNELL: Unless something changes
22 here, put me down as no.

23 (Laughter.)

24 CHAIRPERSON KEESE: All in favor?

25 (Ayes.)

1 CHAIRPERSON KEESE: Opposed?

2 (No.)

3 CHAIRPERSON KEESE: Adopted three to one. Thank
4 you.

5 COMMISSIONER LAURIE: Mr. Chairman, again, this
6 issue is not going to be a unique issue. I think the
7 Commission has to consider the future of what happens when
8 these kinds of industrial parks go in, putting in power
9 that are the subject of our jurisdiction, and yet they're
10 going through, predominantly, the local development
11 process which is not geared to coordinate with our
12 process. And that local development process has its own
13 environmental analysis that covers the predominance of the
14 environment impact.

15 How are we going to fit into that? I think it's
16 an important policy issue for us to examine to make sure
17 that we do not stand in the way of land development, but
18 on the other hand, we do properly assert our mandate to
19 license power plants under appropriate circumstances.

20 So with Commission Pernell's assistance, the
21 Committee will be submitting recommendations as to how
22 properly handle these cases.

23 COMMISSIONER PERNELL: I would submit, I would
24 agree, Mr. Chairman, but I would also submit that earlier
25 we didn't take action when we wanted to examine something.

1 Here, we're giving up jurisdiction. I think we should
2 examine that before we do it and that's my point.

3 CHAIRPERSON KEESE: Commissioner Laurie, I concur
4 with your comments. I believe that as our staff, and as
5 we did the analysis of the future of electrical power
6 generation and the need for quality electricity, I believe
7 that's going to be the mantra of the future.

8 About two years ago, we were looking at the
9 future of these types of distributed generation facilities
10 in conjunction with backup, hopefully cleaner than diesel,
11 turbine generator fuel cells, fly wheels as the future of
12 generation, and that there would not be that many central
13 power plants being built in the future other than those
14 that were built in a campus such as this.

15 Unfortunately, the lack of building for ten years
16 overwhelmed us, and now we're into rushing central power
17 plants and emergency generators. So I absolutely concur.
18 I know that the Calpine is one of the companies that is
19 operating campuses across the country and there are others
20 who are offering campuses.

21 I believe this is a very important thing for us
22 to do. And without characterizing what we have here, but
23 a scheme to avoid the appropriate siting process
24 particularly a scheme which involves diesel generators as
25 the backup to whatever methodology, and I'm not trying to

1 the pejorative here, is not acceptable in the long run.
2 So I think we're going to have to deal with this and I
3 would appreciate --

4 COMMISSIONER LAURIE: How does doc med fit into
5 this?

6 COMMISSIONER PERNELL: But we're eliminating
7 diesel backups, Chairman Keese, not in this proposal.

8 CHAIRPERSON KEESE: No, we are not. I'm saying
9 in the future, I think we have to be concerned about it.

10 CHIEF COUNSEL CHAMBERLAIN: We hope to be
11 eliminating it in this case.

12 CHAIRPERSON KEESE: We hope that they don't do it
13 here, but I think that we have to look at this in a --

14 COMMISSIONER PERNELL: I hope they have enough
15 generation this summer.

16 CHAIRPERSON KEESE: -- broader spectrum.

17 CHIEF COUNSEL CHAMBERLAIN: This could be a
18 contributing factor to that, if we can get the simple
19 cycle portion of the larger power plant that we're
20 envisioning here up and running in August or September.

21 CHAIRPERSON KEESE: Thank you. We don't want to
22 lose our member of the Commission here. If we don't get
23 him to the church on time.

24 Let's take up Item 23 Rio Linda/Elverta Power
25 Project. Possible approval of Executive Director's data

1 adequacy recommendation, RLEPP AFC.

2 Mr. Shaw.

3 MR. SHAW: Good afternoon commissioners and
4 audience. I'm Lance Shaw staff siting project manager.
5 Staff Counsel, Caryn Holmes is to my left and co-counsel
6 is also in the audience.

7 On February 2nd, 2001 FPL Energy Sacramento
8 Power, LLC filed an application for certification, AFC,
9 seeking approval from the Energy Commission to construct
10 and operate the Rio Linda/Elverta power project on a 90
11 acre site in the community of Rio Linda. That site is
12 approximately seven miles east of the Sacramento airport.

13 The project as proposed is a nominal 560 megawatt
14 natural gas fire combined cycle power plant. It is
15 proposed as a 12 month AFC. Our staff has found 14 of 23
16 areas data inadequate. Problematic areas include water,
17 and biological resources.

18 The Commission previously approved the site for
19 the Sacramento Ethanol and Power Cogeneration Project
20 SEPCO and that approval has expired. Power from the
21 project will connect with Western's Elverta/Hurley 230 kb
22 lines near the site. When this AFC is found data
23 adequate, CEC will be working jointly with Western under a
24 Memorandum Of Understanding similar to the process in
25 which we worked on the Blithe Energy Project. We

1 recommend that you find this AFC data inadequate.

2 I have some further comments. The applicant has
3 indicated that it will file supplemental material on or
4 about the 13th of March and would like to come to the
5 business meeting on the 21st of March. Staff strongly
6 recommends and has notified the applicant that it needs 21
7 days to review supplements and to allow proper noticing
8 and that would be the 4th of April business meeting.

9 Also, the applicant has mentioned an accelerated
10 schedule. In an E-mail to Dwight Mudry on the 2nd of
11 March, I asked the applicant to review or six month siting
12 regulations. And if it believes that the six month
13 process would work, then please request it.

14 CHAIRPERSON KEESE: Thank you.

15 Let's hear from the applicant.

16 MR. ROSSKNECHT: I'm Tim Rossknecht, project
17 director for FPL Energy for the Rio Linda Power Project.
18 I'd like to briefly give a little bit on our company.

19 FPL Energy has been in California since about
20 1985, primarily in alternative energies, including
21 geothermal wind and solar. FPL energy is the largest
22 producer of wind power and operates the largest solar
23 project in the US near Barstow, showing our emphasis on
24 clean power.

25 While this project will be our first gas fired

1 plant in California, we operate several thousand megawatts
2 of gas fired projects in other states. And I'd like to
3 introduce some of the Rio Linda team members that will be
4 helping goes through this process. Our Counsel would be
5 Jocelyn Thompson, with Weston Benshoof and Taylor Miller
6 Downey, Brand.

7 Our selection of the Rio Linda site for our first
8 gas fired power plant in California was somewhat based on
9 the idea that this site had already been through the CEC
10 process, and we're hoping that staff's knowledge of this
11 will help to expedite our process.

12 We have received staff's comments regarding data
13 adequacy of our application. We are confident that we can
14 respond to them by early next week. And, in general, we
15 look forward to working with plans and the rest of the
16 siting staff in bringing this project to fruition. And we
17 look upon it as a part of the long-term solution to
18 California's energy shortage.

19 In regards to the expedited schedule, we are
20 constantly reviewing the regulations and the attributes of
21 our project. And we have not formally requested a
22 six-month expedited project at this time. As we feel we
23 have reached an understanding of the regulations, and if
24 we think that our project is appropriate, to receive the
25 six-month expedited process, we'll formally request that.

1 CHAIRPERSON KEESE: Okay. And I will just say
2 that, you know, we're expediting across the Board. We're
3 now going to have 21-day processes, which we think a
4 number of which are probably starting today. And we have
5 our four-month process and that will be being
6 reimplemented, and we have six-month process. And we're
7 going to try to expedite our 12-month process.

8 We have been assured that we will have the
9 staffing to accomplish this. So I would say from my own
10 standpoint, we cannot rush staff in their analysis of
11 this. We have to accept Lance's suggestion as to when
12 they can come back to us. But if there is a possibility,
13 considering that this was a previously approved project
14 site, it may well be that we can expedite the 12-month
15 process. We don't necessarily have to take a whole 12
16 months and we're going to try not to in the future.

17 So I wouldn't -- we're not going to rush staff,
18 at this point, with everything that we've got going on, to
19 meet this deadline. If you can be here on the 13th, we'll
20 give them the 21 days they need.

21 MR. ROSSKNECHT: Okay, I understand.

22 CHAIRPERSON KEESE: Unless somebody up here
23 differs with that.

24 Commissioner Pernell.

25 COMMISSIONER PERNELL: So this is coming back on

1 the 13th for data adequacy?

2 CHAIRPERSON KEESE: We have to approve the --

3 COMMISSIONER LAURIE: Mr. Chairman, I move to
4 accept the Executive Director's report.

5 CHAIRPERSON KEESE: We have a motion by
6 Commission Laurie.

7 COMMISSIONER ROSENFELD: Second.

8 CHAIRPERSON KEESE: Second Commissioner
9 Rosenfeld.

10 All in favor?

11 (Ayes.)

12 CHAIRPERSON KEESE: Approved four to nothing.

13 Thank you, and we'll be back here in April.

14 COMMISSIONER LAURIE: Can I get Commissioner
15 Rosenfeld to leave, he's really making me nervous sitting
16 here.

17 (Laughter.)

18 CHAIRPERSON KEESE: That takes care of Item 23.

19 ASSOCIATE PUBLIC ADVISOR KRAPCEVICH: I'm sorry,
20 but I am the Associate Public Adviser, and I did not hear
21 that Chris Chaddock had an opportunity for his public
22 comment and I also have another one that was given to me
23 by Roberta in regards to Item 23 and I thought that there
24 would be a call for public comment.

25 CHAIRPERSON KEESE: Well, briefly, fine. Since

1 we're --

2 COMMISSIONER LAURIE: Well, recognize that we
3 voted to accept inadequate data, do you still want to --

4 CHAIRPERSON KEESE: We're saying this is not
5 sufficient yet so.

6 ASSOCIATE PUBLIC ADVISER KRAPCEVICH: Okay, so I
7 don't know if you want this or not.

8 CHAIRPERSON KEESE: I would be just as
9 appropriate for next time.

10 ASSOCIATE PUBLIC ADVISER KRAPCEVICH: Because I
11 believe that both of the public comments are not in favor
12 of determining the data adequacy at this point, which you
13 have just addressed. So I just want to say that so I get
14 it entered on the record.

15 CHAIRPERSON KEESE: Fine, okay.

16 MR. CHADDOCK: There was just one other question.
17 My name is Chris Chaddock and I'm a concerned citizen
18 adjacent property owner. I won't go over my comments
19 since it was determined data adequate. But one of the
20 questions --

21 CHIEF COUNSEL CHAMBERLAIN: It was determined
22 data inadequate.

23 MR. CHADDOCK: Data inadequate, excuse me.

24 FPL stated that they had power into this -- in
25 various places in the State or into the United States. I

1 was under the impression that FPL Sacramento Power LLC was
2 a separate entity and not directly part of FPL Energy.

3 COMMISSIONER LAURIE: Mr. Chairman, that's
4 information that we don't have. I would suggest that that
5 question be specifically directed to the Project Manager.
6 We don't know that.

7 CHAIRPERSON KEESE: We don't know that.

8 MR. CHADDOCK: Thank you.

9 CHAIRPERSON KEESE: We're then on Item 17,
10 Minutes. We have no minutes.

11 Committee on Oversight, anybody dare?
12 Chief Counsel's report.

13 CHIEF COUNSEL CHAMBERLAIN: I'm going to postpone
14 it to next week, Mr. Chairman.

15 CHAIRPERSON KEESE: Thank you.

16 Executive Director's Report?

17 EXECUTIVE DIRECTOR LARSON: No.

18 CHAIRPERSON KEESE: You're not doing anything.

19 (Laughter.)

20 EXECUTIVE DIRECTOR LARSON: Just sitting here.

21 CHAIRPERSON KEESE: Public Advisor's Report?

22 We've heard plenty from the Public Advisor.

23 Any report?

24 ASSOCIATE PUBLIC ADVISER KRAPCEVICH: No, there
25 is no report from the public adviser.

1 CHAIRPERSON KEESE: Thank you. This is the
2 moment for anybody who wants to make public comment to
3 make it?

4 Meeting adjourned.

5 (Thereupon the Energy Commissioner meeting
6 was adjourned at 1:10 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

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10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
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